

2/6 LAND-LORDS

# LAW:

## A TREATISE

Very fit for the Perusal of all  
Gentlemen, and others.

BEING

## A COLLECTION

of several CASES in the LAW,  
concerning *Leases, Distresses, Replevins,*  
*Rescous, Waste,* and several other Matters  
which often happen between *Land-Lord*  
and *Tenant*, as appears in the Contents  
of the several Chapters.

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By *G. Meriton, Gent. Olim Clericum*  
*Cliffordiensem.*

---

— *Si quid novisti rettius istis,*  
*Candidus imperti ; si non, his utere mecum.* HOR.

---

LONDON:

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1 6 6 5.







To all Gentlemen Land-Lords  
and other knowing Persons of this  
Kingdom.

Worthy Sirs,

**H**AVING formerly had several  
Doubts and Quare's in my  
Minde, upon some particular  
Cases which oftentimes come in questi-  
on betwixt Land-Lords and their Te-  
nants, and being desirous to satisfie my  
self in those points: I thereupon made  
it my Study and Recreation at some  
spare hours, to search and collect some  
choice Cases, (out of the Reports and  
other Works of several Learned and  
Grave Judges, and other Sages of the  
Law) touching the Covenants, Con-  
ditions, Grants, Provifoes, Reserva-  
tions, Exceptions, Surrenders, Assign-  
ments, and many other things concern-  
ing Leases; as also touching Distresses,  
Rescous, Avowries, Replevins,  
Waste, and other Matters often coming

## The Epistle Dedicatory.

*in debate between Land-Lords and their Tenants, as appears in the several Chapters hereafter in this smal Treatise. Which little Manual at the first undertaking, was intended onely for private use, and a Vade mecum for my own Pocket; but having since communicated it to some special Friends and knowing Gentlemen, they have been very importunate with me for the publishing of it; at whose requests (they being my very intimate Friends and Acquaintance) I have now adventured this small imperfect Treatise to the publick view. If it finde Acceptance it will be much Satisfaction to him, who is,*

27 MR 59

Gentlemen,

Your humble Servant,

George Meriton.



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the Names of the Cases  
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# Land-Lords Law.

## CHAP. I.

*Of Leases : Who may make them, and for what Term ; and who are called Tenants for Life, Tenants for Term of Years, at Will and Sufferance.*

**L**EASE is derived from *Leapum* or *Leasum*, for that the Lessee cometh in by lawful means ; and *Dimittere* is in French, *Laisser*, to depart with, or forgo.

Bract. lib. 4. fol. 220. Fleta. lib. 2. cap. 12. Co. on Littl. f. 42. b.

In every Lease there must be Lessor, and Lessee : He which lets the Land, is called the Lessor ; and he which Farms it is called the Lessee.

Terms of the Law, verb. Lessor and Lessee.

A Lease for years of Lands and Tenements, is good as well without Deed, as with Deed ; but of a Common or Rent, &c. it is not good without Deed.

If a Lease for years be made reserving Rent, it must be of Lands and Tenements, whereunto the Lessor may have resort to distrain ; and therefore a Rent cannot be reserved by a common person out of any Incorporeal Inheritance, as Advowsons,

42 Eliz. in C. B. Butts case, Co. 7 part. fol. 23.

30 Ass. p. 57. 12 Ass. 20. 20 Ed. 4. 10 Co. 1 part. Instit. f. 47. a.

sons, Commons, Offices, Corrody, Mulcture of a Mill, Tythes, Fairs, Markets, Liberties, Franchises, &c. But if the Lease be made by Deed in writing of them, one may have an Action of Debt by way of Contract, but distrain one cannot: But if any Rent be reserved in such cases upon a Lease for Life, it is utterly void.

1 Jac. in C.B-Bp.  
of Bath's Case.  
Co.6. par.f. 34. 35  
40 Eliz. Rector  
Chedington's  
Case. Co.1 par.f.  
355, 156. Bract.  
1.2.C.9. Co.1 par.  
Inst.f.45.b.

Every Lease for years must be for a time certain, and ought to express the Term, and when it should begin, and when it should end. And yet there may be a certainty in an uncertainty sometimes; for the Rule is, *Id certum est, quod certum reddi potest*: therefore look in the 4 Chapter, and you will finde some pretty Cases there about this Rule.

22 lib: Ass.6.

If a man have a Lease of lands for 500 years, it is but a Chattel, and falls to his Executors or Administrators after his death, if he do not otherwise dispose of it in his lifetime.

Cowell Inst.p.  
289.

Every one seised of an absolute pure Estate in Fee-simple, may make a Lease of his Lands for as long a time as he pleaseth; and so might Bishops, &c. before they were

were restrained by Statute. See 32  
H. 8. c. 28. 13 El. cap. 10. 18 Eliz.  
c. 6. 1 Jac. c. 3.

Co. 2 par. of Infr.  
f. 44. a. b. Noy's  
Maxims, p. 69.  
Bro. Lease. 47. 32.  
H. 8. c. 28. Vide  
Hern's Law of  
Conv. p. 66, 67,  
68.

Tenant in Tail, being of full age,  
by Indenture in writing may make  
a Lease of such lands and Inheri-  
tances as have been formerly letten  
to Farm for the space of 20 years  
next before the Lease made ; or if  
it be but letten 11 years at one or  
several times within those 20, it is  
sufficient, reserving the old Rent or  
more ; without impeachment of  
Waste must not be in it, and it must  
commence from the day of the ma-  
king or from the making : and if  
there be an old Lease in being, it  
must be either surrendered, expired  
or ended within one year after the  
making of the new one, or else it  
is not good ; except in the Case of a  
Bishop, which you will finde after-  
wards. And if the Lease be thus  
made, it bindes the Issue of Tenant  
in Tail, if he die before the Term  
be out : but if he die without Issue,  
the Donor may avoid the Lease by  
Entry, and so may he in Remainder,  
and though he accept the Rent, yet  
it shall not affirm the Lease.

The



Co. 1 par. Inst.  
fo. 4; Cowell's  
Inst. p. 189. Noy's  
Maxims, p. 69.

The Husband seised in Fee-simple or Fee-tail in right of his Wife may make such a Lease of his Wife's land, by Indenture in writing, in the name of the Husband and Wife, and she to seal thereunto; and the Rent must be reserved to the Husband and his Wife, and to the Heirs of the Wife, according to her Estate of Inheritance; and this shall binde her and her Heirs after his death.

Co. 1, par. Inst.  
f. 44. 2. Cowell's  
Inst. p. 189. Parsons  
Law, p. 29.

Bishops, Deans and Chapters, &c. seised of any Estate in Fee in right of their Churches, observing the Rules aforesaid, may make Leases: and so may Masters and Fellows of Colledges, and Wardens of Hospitals, if their private Statutes will permit them.

Co: ubi supra.  
32 H. 8. cap. 28.

But note well, that Tenant in Tail, and the persons before named, though they do observe these Rules, yet they cannot let for any longer term then three lives, or 21 years, but for what term they will under.

Co. 1 par. Inst. 1  
f. 45. 2.

If Tenant in Tail or any of the aforesaid persons observe not these Rules in their Demises, yet notwithstanding the Leases shall be good against



against them for their lives.

And if a Lease be made by a Bishop for twenty one years, according to the Rules aforesaid, which is spent within three years or more, now if the Bishop make a new Lease to another for 21 years, to commence from the making, which is confirmed by the Dean and Chapter, this is a good Lease, and the second Lessee may enter when the first Lease is out, and hold for the Remainder of his term of 21 years then to come.

Co. 1 par. Inf. f. 45. a. Pasc. 28. El. in B. R. The Countess of Suffolk's Case. Leonard's Rep. 1 par. 131. Parsons Law p. 27, 28. Vide Hern's Law of Conv. p. 6, 9, 70.

*Demise, Grant, Betake, to Farm-let,* and whatsoever words amount to a Grant, may serve to make a Lease. Co. 1 part Inf. f. 45. b. Bro. Leases 60. 37 H. 8.

Generally now every Lessee for life, years, or at will, although it be of never so small a Cottage or House, is called a Farmor or Fermor, and the premisses he possesseth are called a Farm or Ferm.

But formerly the chief Mesnage in a Village or Town, whereunto belonged great Demesnes of all sorts, which were used to let for term of Life, Years, or at Will, was called a Farm or Ferm.

Terms de Ley; verb. Farm.

They are called Farms or Farms <sup>Ibid.</sup> of

of the *Saxon* word *Feormion*, which signifies to feed or yield Victuals; for in ancient time their Reservations were for the most part in Victuals, until at the last, and that chiefly in the time of King *Henry* the First, by agreement, the Reservation of Victuals was turned into Money, and so hitherto hath continued amongst most men.

Under the name of Lands, are comprehended not onely Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes and Heath; but also Messuages, Houses, Tofts, Mills, Castles, and such like.

Noy's Maxims,  
p. 57. Finch, l. 2.  
cap. 2. p. 109.

If the Lessor seal the Indenture, and not the Lessee, yet it is as good against the Lessor, as if both had sealed.

Noy's Maxims,  
p. 57. Littl. 88.  
14 Eliz. Finch,  
l. 2. c. 2. p. 109.

And if at any time there happen any variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended onely, the misprision of the writer: For the Lessors is the principal Deed, and the other but onely a Counterpane.

Now we have spoken briefly something concerning Leases, and who

who may make them; we shall next speak something of the several sorts of Tenants mentioned in this Treatise, and so conclude this Chapter.

Tenant for Life is he who hath Lands or Tenements for his own or another mans life; and this Tenant hath a Freehold, but none other of lesser Estate hath a Freehold.

*Lit. Tenures, lib. 1. cap. 6. Noy's Maxims, p. 30.*

If a man be Tenant for term of his own life, he hath an higher Estate then he that is Tenant for another mans life.

*Co. 1 part. Inst. fol. 42. 2.*

Tenant for term of years, is, where a man letteth Lands or Tenements to another for a certain term of years, as it is agreed between them; and when the Lessee entereth, he is then Tenant for term of years; and if the Lessor reserve to him a Rent, he may either distrain on the Premises, or have an Action of Debt, if the Rent be arrear.

*Lit. Tenures, Co. 1 part. Inst. fol. 43. b. 44. 2.*

There needs no Livery and Seisin to be given upon a Lease for years, but the Lessee may enter when he will; but a Lessee for life must

*Co. 1 part. Inst. fol. 48. 2.*

## Land-Lords Law.

must have Livery, or else no Freehold passeth.

**Little Tenures, l. 1.** If a man make a Lease by Parol  
**1. Finch, l. 2. c. 2.** to another, it behoves that he be  
**p. 109. 38 H. 8.** seised of the Lands or Premises at  
**Br. Estoppel 8.** the time of the Lease made; for  
else the Lessee may plead, that  
the Lessor had nothing in the Pre-  
mises at the time of the Lease made,  
and then he is barred of his Action:  
But if it be by Indenture in writing,  
then the Lessee cannot plead this  
Plea.

**Co. 1 part. Inst.** Tenant at Will is, where Lands  
**f. 55. a. Fleta, l. 1.** or Tenements are let by one man  
**B. 6. 35.** to another, to have and hold to him  
at the Will of the Lessor: Now  
when the Lessee enters, he is Te-  
nant at Will, and the Lessor may  
put him out when he pleases.

**Coo: ibid.** But if a man let Lands to another  
by Lease, to hold the same, during  
the Will of the Lessee; in this case  
the Law intends it to be at the will of  
the Lessor also, and he may put him  
out when he pleases. The same Law  
is, if it be at the Will of the Lessor,  
it is intended at the Lessees Will al-  
so; for the Lessor cannot force him  
to stay longer then he pleases.

must

Tenant at sufferance is he, who comes in by lawful Lease, and keepeth possession after his Lease is out, and wrongfully holdeth over. *Finch. lib. 2. cap. 3.* As Tenant for Life of *I S.*, who holdeth over after the death of the said *I S.*

Co. 1 part. Inst. fol. 57. b. Bract lib. 4. fol. 318. 21 H. 6. fol. 42. Kitchin. f. 238. a. 4 Ed. 3. 24 Ed. 3. 24. F. N. B. 201. D. Plow. Com. 138.

The Lessor cannot have an Action of Trespass, against such Tenant before his Entry into the Premises.

Co. ubi supra.

CHAP. II.

*Of the Covenants, Conditions, Grants, Proviso's, Reservations, Exceptions, Surrenders, Assignments, &c. of Leases.*

**I**F the Lessor Covenant to make a new Lease upon Surrender of the old Lease, and afterwards he makes a Lease by Fine for more years to a stranger, here the Covenant is broken, although the Lessee did not Surrender, the which by the words ought to be the first Act; for that the Lessor did disable himself, either to take the Surrender, or make the new Lease.

38 Eliz. Sir Anthony Mayn's case. Co. 3 part. f. 20. Noy's Max. p. 13. Hughs gr. Abr. 1 part. pag. 487. c. 16.

If

Noy's Maxims,  
p. 17. & 50. Dr.  
& Stud. lib. 1.  
cap. 24.

If a man make a Lease for years, and the Lessee covenanteth and granteth to pay to the Lessor, his Heirs and Assigns, yearly during, &c. ten pound: Here if the Lessor die, the Executors shall have the Rent arrear.

Hen. 8. Bro.  
Leases 60. Kitch.  
Court-Leet, pag.  
235. b.

If a man covenant and grant to *R A* that he shall have ten Acres of Land in *C* for years, this is a good Lease; for *Concessit* is of such force as *Dimisit*.

Pasche, 25 Eliz.  
in B.R. Co. 5 par.  
f. 16, 17. Spencers  
case, M. 29 Eliz.  
in B. R. Barker  
and Fleetwells  
case, Godbolts  
Rep. fol. 69, 70.  
Vide Hens Law  
of Conv. p. 107,  
108, & 109.

If the Lessee covenant for him and his Assigns, to build a Brick-wall or an House upon the Lessors Land, or pay a Collateral sum of money to the Lessor, and after the Lessee assigneth over his Term; in this case the Assignee shall not be bound by this Covenant, because the things were onely Collateral, and were not *in esse*, nor parcel of the Demise, at the time of the Lease made.

38 El. Co. 3 part.  
fol. 64. Pennants  
case. Cowels  
Inst. p. 153. Dyer  
fol. 51.

If there be a Covenant in a Lease, that if the Rent be behinde for such a time, then the Lease to be void: Here no acceptance of the Rent after such failure, will make the Lease good.

If

If a man let a House and Lands for years, and the Lessee covenanteth to uphold the Houses, and to leave the Houses and Lands in as good a plight and estate as he found them; in this case, if the Houses be blown down by tempest, or fired by accident, or otherwise destroyed, if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may bring an Action of Covenant against him at the end of his term: But if he maketh Waste in the cutting of Timber, the Lessor may have an Action of Covenant before the end of the Term for that.

Trin. 1649. Rot. 348. in B. R. Compton & Al- lens case. Styles 162. F.N.B. fol. 145. K. Noy's Maxims, p. 16. 40 Ed 3 5. Finch, p 64. 38 Eliz. Sir Anthony Mayns case. Co. 5 part. fol. 20.

And if the Lessee for years covenant and grant for him and his Executors with the Lessor, to repair the Houses as often as need requires, and after the Lessee assigns over his term, and the Assignee suffers the Houses to decay; in this case, an Action of Covenant lies against the Assignee, although he be not named in the Covenant.

Mich. 44 Eliz. in B. R. Dean and Chapter of Windsors case, Co. 5 part. f. 24. Hughes's gr. Abr, 1 part. p. 452. c. 19.

If the Lessor covenant with the Lessee, that he shall have sufficient

Co. 1 part. Inst. f. 41. B. Dyer, fol. 19.

B

Hegd-



Hedg-bote by the Assignment of him or his Bailiff: Here he may not take it without Assignment, *Quia modus & Conventio vincunt Legem.*

Perkins, Tit. Com.  
ditions, 738. M.  
1: 9 B. R. Styles  
pract. Regist. p.  
75.

If a man take a Lease by Indenture of a ruinous House, or that wanteth Reparations; and do Covenant in the Lease to leave the House at the end of the Term, in good repair: Here he is bound to leave it in good repair, whatsoever happen, by the rule aforesaid. But if he do not covenant to do it, he is not bound by Law in such case to do it.

Pol. b. 14 H. 8.  
32. Perkins 738.  
40 Ed. 3. 6.  
Hughs's gr. Abr.  
p. 499. c. 2. Phi-  
lip's Principles of  
Laws, p. 2.

If a Lease for years be made of a Wood by Deed indented, and it is there covenanted, that the Lessee shall leave the Lessors Wood in as good plight as it was at the time of the Lease made, and during the term the Wood is destroyed by a sudden tempest; in this case the Lessor can have no Action of Covenant against the Lessee, for the non-performance of this Covenant, for it is not impossible for him to perform the same, and *Lex non cogit Impossibilia.*



If a Lease be made for years, rendering Rent, and the Lessee is bound to perform all Covenants and Agreements, if he do not pay the Rent, the Obligation is forfeited; for the payment of the Rent is an Agreement.

22 H. 6. See Gold broughs Rep. p. 16. in the end

If a man be bound in an Obligation to repair the Houses of the Obligee, as often as need shall require, during such a time, and after the Houses need reparations; in this case, though the Obligor knoweth not that they need reparations, yet he is bound to take notice at his peril; for Ignorance here excuseth not.

Dr. & Stud. l. 2. c. p. 47.

But if the Condition had been to repair such Houses as the Obligee should assign, and after he assigneth, &c. but the Obligor hath no notice of it: Here the ignorance shall excuse him, for the Obligee ought to give him notice: But if the Assignment had been appointed to a stranger, there the Obligor must have taken notice at his peril.

Dr. & Stud. lib

If a Lease for years be made with Warranty, this sounds not in the

Litt. 166. 26 H. 8. 2. Finch, l. 2. c. 3. p. 115.

nature of a Warranty, but of a Covenant, because it is but a Chattle; and if the Lessee be ousted, yet he may have an Action of Covenant.

Palch. 9 Ed. 1. 4.  
Palch. 24 Ed. 4.  
24. Palch. 45 Ed.  
3. 3. Mich. 44 Ed.  
2. 37. Perkins,  
825.

If I be seised of ten Acres of Land, and lease the same to a stranger for life or years, reserving ten shillings Rent to me, &c. payable at the Feast of *Easter*, and the Lessee doth binde himself to me in a bond of one hundred pound, to pay the Rent reserved upon the Lease, justly according to Law; if before any day of payment I do put the Lessee out of part of the Land, and he doth occupy the residue for the whole term, and will not pay any Rent, yet the Bond is not forfeited: for by the putting out of the Lessee of Parcel of the Land, the whole Rent is in suspense, but if one day of payment be incurred before the ouster, then he must pay the Rent, or else the Bond is forfeited.

In P. R. Page &  
Par's case, Styles  
Rep. 243.

22 H. 6. ac. Perkins, 826. See Par-  
radine & Joxe's  
case, M. 23 Car.  
in S. R. Styles  
Rep. f. 47, 48.

If a stranger who hath not any right, doth put out the Lessee for years of the same Land before any day of payment, and keep possession thereof until the day of payment  
bc

be past, yet the Lessee ought to pay me the Rent at the day whereon it ought to be paid, or otherwise he forfeits his Bond.

If three Copartners be seised of a Mannor, and one of them in her own name, and without the agreement of the other two, doth lease the whole Mannor unto *I S* for four years, yielding five pound yearly at the Feast of *Easter*, unto the Lessor and her Heirs, and *I S* doth binde himself in forty pound unto his Lessor, to pay the Rent reserved, &c. and before any day of payment, the other two Copartners which did not consent to the Lease, do put the Lessee out of the whole Mannor, and keep the possession until the day of payment of the Rent be incurred; yet it behoveth the Lessee to pay the third part of the Rent reserved to his Lessor, otherwise he forfeits his Bond: For the two Copartners who put him out, have no right but to two parts of the Mannor.

Pasch 9 Ed. 4. R.  
Mi h. 12 H. 8. 3.  
Perkins, 828.

If a Lease be made to three, upon

28 Eliz. Lord  
Staffords case.  
28 li. in C. B.

Leeds and Cromptons case. Hughs's gr. Abr. 1 p. rr. p. 428 4 & 5.  
P. & M. Dyer 152. Vide Co. 4 part. Dumpors case. 45 El. in B. R.

B 3 Condition,

Condition, that they, nor any of them, should aliene without licence, if the Lessor give leave to one of them to alien, now the other two may alien without licence; for the Condition being determined to one is determined to all.

Noy's Maxims,  
pag. 72.

If the Lessor do enter for Condition broken, or the Lessee do surrender, or the Term end; yet the Lessor may have an Action of Debt for the Arrearages.

Dr. & Stud. l. 2.  
c. 35. M. 31 H. 8.  
Dyer, f. 45. Co. l.  
8. f. 90. b.  
7 Ed. 4. 13. &  
Philips's Prin. of  
Law, p. 14.

If a Lease be made upon Condition, that the Lessee shall not aliene to *A*; if the Lessee aliene to *B*, and he aliene to *A*, the Condition is not broken; for a Condition that goes to the breaking of an Estate shall be taken strictly.

Littl. lib. 3. c. 5.  
Co. 1 part. Inst. f.  
216. a. b. 217 a. b.  
Vide Lora Stalfords case, Co.  
8. part, f. 73 Vide  
Hern's Law of  
Conveyance, p.  
43. And see N.  
bols case, Pl.  
Com f. 487. and  
Kitching, f. 219. a.

If a man seised of Lands in Fee, lease the same to a stranger by Indenture for five years, upon Condition, that if the Lessee pay to the Lessor five pound within the two first years, that then he shall have Fee in the same Land; in this case, if he pay the money, he hath a good Estate in Fee, if Livery and Seisin were made according to the Deed.

Perkins 708. Vid.  
9 H. 6 27.

But if a man seised of Land in Fee lease

lease the same to a stranger for years, upon condition that if the Lessee be ousted within the term by his Lessor, that then he shall have Fee; here if the Lessee be ousted by a Stranger without the Lessor's assent, he shall not have Fee.

If a man seised of lands in Fee Perkin. 710. lease the same to a Stranger by Indenture, yielding 5 pound by the year; and the Indenture is, that if the Lessee will hold over 10 years to him and his heirs, that he shall then pay 20 pound by the year, and Livery and Seisin is made to the Lessee accordingly; in this case for the Rent behind within the 10 years the Lessor shall have an Action of Debt, which proveth the Free-hold and the Fee are not in the Lessee before the 10 years ended: but if when the 10 years be past and ended the Lessee doth continue the possession of the same land, and doth occupy the land by force of the Indenture, then he hath Fee, and shall pay the 20 pound as a Rent seck. But if a man M. 40 E. 3 27. Perkins, 711. Cook 1 part Inst. f. 218. seised of land doth lease the same land for life, yielding unto him a Rose for the first 6 years, and if he

will hold the land over the fix years, that he shall pay 3 Marks by the year; in this case the Lessee hath the Free-hold presently.

4 H. 7. 4. 8 E. 4.  
13. P. 2. E. 4. 3.  
Perkins, 725, &  
723 Vide Henne's  
Law of Conv.  
P. 115.

If a Lease for life or years be made upon Condition, that if the Lessee kill *I S* within the term, that then he shall have and hold the land leased unto himself and his Heirs for ever; now if he kill *I S* within the term, yet his estate is not enlarged thereby, because the Condition is against Law, and the Estate doth begin to be enlarged upon the performance of the Condition; yet the Lease is good, because the same doth not begin by the Condition.

Perkins, 723,  
7. 0.

If a Lease be made for years upon Condition, that if the Lessor do aliene the Reversion within the term, then the Lessee shall have Fee, and the Lessor doth alien the Reversion in Fee by Fine to a Stranger; now in this case the Lessee shall not have Fee; for the Free-hold, and the Fee are lawfully in the Conusee before the Lessee can take it by Condition: but if the Lessor had Granted by Deed only to a Stranger, then the Lessee should have had Fee by the

the Condition; and the reason is, because the Reversion is not in the Grantee before Attornment.

If a man have a Lease for years, and demise or grant the same upon Condition, &c. and die; his Executors or Administrators shall enter for the Condition broken, for they are privy in right, and represent the person of the dead.

Perkins, 833.  
Terms of the Law, verb, *Privy*.  
Vide 21 H. 7.  
13. a. & Co. 1 par.  
of Instit. f. 214. b.

All Grantees of Reversions may enter upon the Farmers for any Forfeiture or Condition, and have like advantages against them (by Action onely) for any other Covenants, Conditions or Agreements contained in the Indentures of their Lease, as the Lessors, their Heirs or Assigns might; and the like for the Lessees against the Grantees of the Reversions (Recovery in value onely excepted.)

32 H. 8. c. 34.  
Finl. 2. c. 2. p. 107.  
Hern's Law of  
of Convey. p. 31.

If a man make a Lease for years upon Condition that the Rent shall be paid at *Michaelmas*, and in the mean time give a general Release to the Lessee of all Actions and Demands; yet this doth not remit the Rent, but the Lessor may sue for it: and the Reason of this is be-

Lit. 1. 3. c. 8. c.  
1 par. Inst. f. 292.  
b. 45. f. 3. 8. 17 H.  
6. 20. Cowell's In-  
stit. p. 193.  
Maxims, f. 77.



cause it was neither *Debitum* nor *Solvendum* at the time of the Release made; and it is a thing not merely in Action, because it may be granted over.

Vid. 3 E.6. Dyer  
67. Farrington's  
Case. Cowell's  
Instit. 159.

If two take a lease joyntly for years with Condition, that if the Lessees die before the term ended the lease shall be void; now the Lessees make division, and one of them alienateth his part, and dies; in this case the Lessor cannot re-assume the part of him that died, but the Alienee shall have it during the life of him that surviveth.

Hil. 36 Eliz. Rot.  
275. Cole and  
Taunton's Case.  
Golsb. p. 184. Pl.  
122. Vid. the Case  
31 H.8.45.

If a Lease be made for years upon Condition, that if the Lessee demise the premisses or any part thereof other then for a year to any person or persons, then the Lessor and his Heirs may re-enter; the Lessee after, devises it to his Son by his Will; this is a breach of the Condition.

Dr. & Stud. lib. 2.  
cap. 20. fo. 53. a.

If a man of his mere motion enfeoff *H* by Indenture, upon Condition that he shall yearly pay to *I S* out of the Lands a certain Rent, and if he fail in payment, that it shall then be lawful to the said *I S* to enter,



ter, &c. the Rent is behind, and unpaid; in this case *I S* may not enter by law, for there is an ancient Maxim, That no man shall take advantage of a Condition unless he be party or privy to it.

If the Grantee of a Rent-charge release parcel of the Rent to the Grantor, or his Heirs, the Remainder may be apportioned, and the Land shall remain chargeable still for the residue: but if he release in one Acre parcel of the Land charged, then all the Rent is extinct and gone.

Dr. & Stud. Lib 2.  
c. 15. 21 H. 7. 25.  
C. 1 par. 1. Int. to.  
147. b. 1. 8. a. H. 14  
El 2. in C. 8. Gou.  
bolt 139. Hard-  
ing's Case. M. 30.  
El 2. in E. R.

If the Lessor grant a Rent to a Stranger, the Tenant cannot Attorn nor put him in possession by the delivery of an Ox or such like thing; because it is another thing: but upon a Recovery of a Rent, the Sheriff may deliver possession by such a thing.

49 E. 3 15. Finch  
lib. . . . 3. 36.

If one that hath a lease for years grant his term to a Feme-Covert and to another; or if a Feme-sole and another be Joynt-Tenants for years, and she take a Husband; yet the Estate of the Feme and Jointure doth continue, so as the Surviv-

14 Eliz. Pl. 41.  
Finch 1. 1. c 3.  
143.

vor

vor of the Wife, or of the other,  
shall have the whole Estate.

37 H.6. 27 26 B.  
3.69.14 H. 8 13.  
Brañt. l.4. f. 207.  
Fleta, .3.c. 12.  
Co. 1 par. Inst. f.  
42 a. Hern's Law  
of Conv. p.45.

If a man grant an Estate to a Wo-  
man *dum sola fuit*, or *durante vidu-  
itate*, or *quamdiu se bene gesserit*, or  
to a man and a woman during the  
Coverture, or as long as the Grantee  
dwells in such an house, or so long  
as he pays 10 pound, &c. or until  
the Grantee be promoted to a Bene-  
fice, or for any like incertain time ;  
in all these cases, if it be of lands  
or tenements, the Lessee hath in  
judgement of Law an Estate for life  
determinable, if Livery and Seisin  
be made.

Co. 1 par. Inst. f.  
42; 2a

And if it be of Rents, Advousons,  
or any other thing that lies in Grant,  
he hath a like Estate for life by the  
delivery of the Deed.

Brit. f. 83. Fleta  
l 3 c. 12. Brac. l.  
4. f. 170. Co.  
1 par. Inst. f. 41. b.

If a Lessee for another man's life  
die, living the other man, he that  
doth first enter upon the Estate after  
his death shall be Tenant *pur anter-  
vie*, that is, Tenant for the other  
man's life, and shall be liable to the  
payment of the Rent reserved, and  
in Law is called an Occupant, be-  
cause his Title is by his first Occupa-  
tion.

And

And so if a Tenant for his own life grant over his Estate to another, if the Grantee die, living Tenant for life; in this case he that first enters shall be an Occupant: in like manner it is of an Estate created by Law; for if Tenant by the Courtesie or Tenant in Dower grant over his or her Estate, and the Grantee dieth during their lives, in this case also there shall be an Occupancy.

Co. ibid. 27. Aſ.  
p. 31. Pl. Com. fo.  
28. b. in Colt-  
hirst's Case, tit.  
Barr. 203:

But there can be no Occupant against the King, for *Nullum tempus occurrit Regi*.

Co. ibid.

It were good, saith my Lord Cook, to prevent the incertainty of an Estate of the Occupant, by adding these words, [To have and to hold to him and his Heirs during the life of *Cestui que vie*:] and this shall prevent the Occupant.

11 H. 4. 42. 17 E.  
3 48. Dyer. 8 B.  
353 Co. 1 par. In-  
stit. f. 41, b.

And if a man hath an Estate already for another's life without the words before named, then it is good for him to assign his Estate to divers and their Heirs during the life of *Cestui que vie*.

Co. 1. part Inst.  
ibid.

If a Lessee for 20 years of lands and tenements grant the same lands

Perkins, 693.

for

for parcel of the years to a Stranger, reserving to himself 20 shill. in this case he may distrain for the Rent reserved, or have an Action of Debt at his pleasure, because by common intendment he is to have the same land after the years determined, because he hath granted but parcel of the years, so that the Remainder remains in him.

Perkins, 692.

But if *Cestui que use* lease his land in Use for term of years, reserving Rent by word of mouth; in this case he cannot distrain for the Rent reserved, because no Reversion doth remain in him; but it is said he may have an Action of Debt for it, but some doubt of it.

Perkins, 51. Co.  
3 par. Inst. f. 46. b.

If I lease land to another for years, the term to begin at the Feast of *Easter* next, and before the Feast the Lessee grants his term to a Stranger; this is a good Grant, for he hath an Interest before Entry, which may be granted over.

Perkins, 91.

If Rent be granted to me, I may grant it away to a Stranger, before I be seised thereof.

Perkins, 108.

If a man grant to another Common of Pasture for 10 Kine in lands  
in

in such a Town, though the Grant be general, yet the Grantee shall not have Common but in lands Commonable, so as the Grant shall extend but to Pasture-grounds.

Tenant at Will cannot grant over his Estate, for he hath no Interest certain. 27 H. 6. f. 2. b. Kitchen, p. 237. 2.

If a Lease be made to Baron and Feme for term of their lives, the Remainder to the Executors of the Survivor of them, if the Husband grant away the term and die, yet this shall not bar the Wife. Hil. 17 El: in B. R. Co. 1 par: Inst. f. 46. b.

If the Husband and Wife be ejected of a Term in the right of his Wife, and the Husband bring an *Ejectione firma* in his own name, and do recover, and die; in this case his Executors shall have it, and not the Wife, for the Recovery in his own name did vest the Term in himself. Co. 1 part Inst. f. 6 b 37 Ass. p. 11. Pl. Co. 418. b.

If a man be posselt of a Term of 40 years in right of his Wife, and make a Lease for 20 years, reserving Rent, and die; here the Executors of the Husband shall have the Rent for that Term, but the Wife shall have the Remainder of the Term when the 20 years is out; but if he had Co. ibid. Pl. Co. 260. b. Dame Hale's Case. Co. 1 part Inst. f. 351. a. See Finch. 11. c. 5. p. 72. & Dyer 264. b. Hern's Law of Conv. p. 81, & 82.

had granted the whole Term, then she had got nothing.

Co. 1 par. Inst. fo.  
279 a. 49 E. 28.  
32 H. 6 8. Co. ibid  
1. 46. b. Perkins,  
602. See the  
Clerk of Assize,  
p. 50.

A Release made to Tenant for years before his Entry to encrease his Estate is void; but a Release of the Rent before entry is good. The Tenant may grant away his Interest to another before Entry, and although the Lessor die before Entry, yet the Lessee notwithstanding may enter into the Lands; or if the Lessee die before Entry, his Executors or Administrators may enter: and if the Lease be made to two, and one die before Entry, yet his Interest survives.

Co. 1 part Inst. f.  
46. b.

The Lessor cannot grant away the Reversion (before the Lessee's Entry) by the name of a Reversion.

12 El. 381. Finch,  
1 r. c. 3. p. 15. Vid.  
Lutterell's case.  
43 El. in B. R. Co.  
4 lib. f. 86 & Co.  
1 par. Inst. f. 41. a.  
Vide Co. 5. 1. in  
Spencer's case.

If a man grant to a Lessee for years, that he shall have so many Estovers as shall serve to repair his House, or that he shall burn within his House, or such like, during the Term; this is appurtenant to the Land, and shall run with the same as a thing appurtenant in whose hands soever the same cometh.

1 El 198. Finch,  
lib. 1. cap. 3. p. 27.  
Noy's Maxims,  
p. 7.

If a Lessee for years grant a Rent-charge and surrendreth, the Rent

## Land-Lords Law.

44

Rent shall be paid during the Term to the Stranger.

If two Tenants in common do grant a Rent of 10 shill. this is several, and they shall be charged with 20 shill. Rent; but if they make a Lease and reserve 10 shill. Rent, they shall have no more but ouely 10 shill. between them.

If a man make a Lease, provided that the Lessee or his Assigns shall not aliene the premisses without special licence of the Lessor, &c. and after the Lessor giveth licence to aliene the same, or any part; in this case the Lessee may aliene and his Assigns *ad infinitum* without any more License, for the Proviso is determined for ever; and if the Lessor die before the Lessee aliene, yet that does not countermand it.

If the words of a Lease be, that it shall not be lawful for the Lessee to aliene without the assent of the Lessor, on pain of Forfeiture; this Restraint continueth but during the life of the Lessor and Lessee.

If a Lessee for years devise his whole term to A, provided if he die while I S is alive, then the Residue shall

Pl. Com. Hil. & Grange's Case. 171. 2 & 3 P. & M. 140. b. 168. b. Finch, l. r. c. 3. p. 63. Co. i par. Inst. 197. a.

F. N. B. 223. Mich. 3. Jac. in Ca B. Co. i par. Inst. f. 52. b. 45 El. in B. R. Dumpsor's Case. Co. 4. l. 6. 119. Hern's Law. of Conveyances, p. 110.

M. 3. E. 6. Dyer 65, 66. Hughe's gr. Abr. i part p. 317.

Dyer f. 75. Cowell's Inst. p. 142. 43. Bro. Char. tells 23 Done 57. Hern's Law of Conv. p. 81.



shall remain to *IS*, *A* aliens and dies;  
in this case *I S* is without remedy.

27 H. 8. 19. Finch,  
l. i. c. 3. p. 65.  
Mich. 5 Jac. *inter*  
Wotton & Ed-  
win in B. R. Co.  
1 par. Inst. f. 47. a.  
Goldsbor. Rep.  
p. 148. pl. 68. Vid.  
*Pacis Consultum*,  
p. 92.

If a man make a Lease for years,  
reserving Rent to him, without na-  
ming his Heirs, the Rent shall then  
determine upon his death, if he die  
within the Term; or if it be to him  
and his Assigns or Executors, it is all  
one: but if it be reserved generally  
without shewing to whom, it shall  
go to his Heirs.

See 17 El. in B. R.  
*inter* Pepal &  
Hammington.  
Poph. 117 & 118.

If a man lease Land to another  
by Deed indented, except and al-  
waies reserved to the Lessor all  
great Trees growing upon the same  
Land; by this Lease the great Trees  
shall not pass.

Finc. l. i. c. 3 p. 9.

If two Co-partners make a Lease,  
reserving Rent, they shall have this  
Rent in common as they have the  
Reversion; but if afterwards they  
grant the Reversion, excepting the  
Rent, then they shall be Joint-te-  
nants of the Rent.

Dyer 56, & 82.  
Co. 1 p. 1. Inst. f.  
148. b. Hughes's  
gr. Abr. p. 193. 1  
1 par. c. 6.

If a man let Lands for years, re-  
serving Rent, and a Stranger doth  
recover part of the Land, then the  
Rent shall be apportioned, that is to  
say, divided, and the Lessee shall pay,  
having respect to that which is reco-  
ver'd,



ver'd, & to that which yet remaineth in his hands, according to the value.

If a man make a Lease of a Mannor, except an Acre; this Acre is no part of the Mannor, as to the Lessor: But as to him that hath right to demand the Mannor, by an eign-Title it remains parcel, and therefore he shall make no foreprise in his Writ.

1 & 2. Ph. & M.  
104. Finch, l. 1. c.  
3. p. 18. Perkins  
6. 3. 11 Ed. 4. 2.  
Philips Prin. of  
Law, p. 120.

A Lease of a Mannor, excepting the Services, the Exception is void; for it is parcel of the thing let.

Finch. ibid, p. 57.

If one make a Lease, excepting a Close and Wood. Now the Law giveth him a way to come to it.

14 H. 8. 1.

If the Lessor make a Feoffment, and the Lessee for years giveth leave to the Lessor to make Livery and Seisin of the premisses, saving to himself his Lease, and he doth so: Here the Term is not surrendered, for the Lessee had an Interest which could not be surrendered without his consent to surrender; and here no such intent doth appear, wherefore he may enter and have his Term, and the Rent is renewed: But it is otherwise with a Lessee for life, for there the Rent is extinct.

Noy's Maxims,  
p. 59.

If

Perkins, 117. V.  
Watt and Maid-  
wells case, Hil.  
3 Car. Rot. 1302.  
B. R. Huttons  
Rep. 104.

Perkins 601.  
Noy's Maxims,  
74.

5 Ed. 3. 19. & see  
Perkins, 80.

Henr's Law of  
Convey. p. 76.  
Perkins, pl. 609.

1 Aff. p. 30. Trin.  
8 Ed. 3. 46. Per-  
kins, 117.

If a Lessee for years do take a new Lease for more years; this is a Surrender in Law of the old Lease.

A Lessee for years cannot surrender before his Term begin, neither can he surrender part of his Lease, but he may grant part of it.

If two Joynt-tenants in Fee, are of one Acre of Land, and Lease the same Acre to a stranger for life, and the Lessee granteth his Estate to one of the Lessors; this is a Surrender for the whole Acre, and not for a Moyety. *Tamen quare.*

If a Lessee for life of an Acre of Land lease the same Acre to his Lessor for years, the Remainder to a stranger in Fee; this is no Forfeiture, though he do make Livery and Seisin to the Lessor.

If a Lessee for life or years of Land say to his Lessor, that he will occupy his Lands no longer, which he holdeth of him for life or years, and so wills him to enter; in this case if the Lessor consent, it is a good Surrender:

But if the Lessee for life or years of a House and Lands remove his goods out of the House and Land, by

by reason of the greatness of the Rent, or because he is behinde in his Rent, or for any other cause, and the Lessor do enter into the House and Lands; this is no Surrender of the Tenant.

If a Lessee for years assign over his Term, and die, his Executors shall not be charged for Rent due after his death. *Noy's Maxims*, p. 72.

37 El.B.R. Overton and Siddals case, cited in Co. 3. l. in Walkers case there.

If the Executors or Administrators of a Lessee for years do assign over their Interest, neither doth an Action of Debt lie against them for Rent due after the Assignment.

Co. ibid. in Walkers case, *ut supra*. *Noy's Maxims*, p. 72.

If a Lessee assign over his Term, the Lessor may charge which of them he will; but if he once accept of the Rent from the Assignee knowing of the Assignment, he cannot then after bring an Action of Debt against the Lessee for Rent due after the Assignment.

Marrow & Turpins case, P. 4<sup>th</sup> Eliz. Rot. 2485. Vide March and Brace's case, M. 11 Jac. in B. R. Bullst. 2 part. 151. Hern's Law of Convey. p. 110.

If the Lessor grant away the Reversion after the Assignment of the Lessee; in this case the Grantee cannot have an Action against the Lessee for the Rent, because there is no privity between them.

36 Eliz. Ungle & Glovers case. V. Co. 3. l. in Walkers case there; and see Humble & Olivers case, M. 36 El. in B. R. Popham, 55.

If

19 Ed. 3. Sur. 8.  
Co. 1 part. Inf.  
f. 42. 2.

If a Tenant for life Enfeoff him in Remainder for life; this is a Surrender, and no Forfeiture.

Co. ibid. 13 R. 2.  
Dower 95.

— If a Tenant for life make a Lease by Deed, or without Deed, to him in Remainder or Reversion, and after he in Remainder, taketh wife and dieth; in this case she shall not be endowed, for the Tenant for life shall enjoy the Land again: For it cannot be a Forfeiture, because he in Remainder was a party; and Surrender it cannot be, for that his whole Estate was not given.

Co. 1 part. Inf.  
fol. 42. 2. 29 Aff.  
p. 64.

If a Tenant for life take an Husband, and by Deed indented, they make a Lease to him in the Reversion for the life of the Husband, reserving a Rent; this is neither Forfeiture nor absolute Surrender, for the reasons in the last Case mentioned.

But if a Tenant for life take Husband, and they by Deed indented make a Lease to him in Reversion for the life of the Wife, reserving Rent; this is a Surrender, for their whole Estate is granted, and the Reservation is void.

If a Lessee for twenty years take a Lease for ten years to begin presently; upon Condition, if such a thing be not done to be void: now the first Lease is surrendered in Law; and though the second Lease be void upon the Condition broken, yet the Surrender remaineth good.

Co. 1 part. Inst. f. 218. b. Pl. Com. in Fulmerstons case, 107. b. Vide Poph. Rep. f. 9. V. Herns Law of Conv. p. 93. & 74. Finch, lib. 1. c. 4. p. 62. 1 & 2 P. & M. 107.

If a Lease for years be made to a man without any consideration, the Lessee shall be seised to his own use.

Perkins, 536.]

If a man make a Lease to another and his Heirs for twenty years, intending that his Heirs shall have it; yet if the Lessee die, notwithstanding the intent, the Executors, and not the Heir, shall have it.

Dr. & Stud. 1. r. cap. 24. See the Clerk, of Assize, p. 63.

If a man let a House *Cum pertinent.* no Lands pass; but if it be *Cum omnibus terris pertinent.* here the Lands used with the same, do pass. *Hern's Law of Conveyance*, p. 104.

Pl. Com. f. 85. b. & f. 270, 273. 31 H. 8. tit Lease 55. 23 H. 8. tit. Feoffment 53.

If a man take a Lease of his own Land by Deed indented, he is then concluded to say, That the Lessor had nothing in the Land at the time

Br. Estoppel 221. M. 31, 32 El. in C. B. in London's case, adjudged. 1 Co. 1 part. Inst. f. 47. b. Vide Terms of the Law, verbo Estoppel.

time of the making of the said Lease, but after the Lease is out the Estoppel is removed.

24 Car. See Beverleys case.  
Claytons Rep. p. 111. Pl. 189. and see Greens case, An. 1650. Idem, p. 146. pl. 265.

If two Joynt-tenants are of a Lease for years, and one bid the other go out of the House, and he does so; in this case he may have an *Ejectione Firme* against his fellow as well, as if he had put him out by force.

### CHAP. III.

*Of Payments, Rents, Acceptance, Confirmations, Extinguishments, Demands, Re-entries, Limitations, &c. of Leases.*

Vide Cluns case, 11 Jac. in B R, Co. 10. lib. f. 227. Co. 1 part. Inst. f. 202. a. And see Hare and Savil's case, M. 7 J c. in C. B. Brownlo's 2 part. pag. 273. Hens Law or Conv. p. 23.

**I**F the Lessee be to pay his Rent to his Lessor at *May* day and *Martinmas*, or within fifteen days next after, either of the said Feasts; in this Case the Tenant need not pay till the fifteenth day; for that is the legal day, and the other only a voluntary day of Payment: And if there be a clause, that if the Rent be behinde by the space of fifteen days after any of the said days of

of payment, then the Lease to be void; in this case the Lessee shall have thirty days after either of the Feasts, to save his Lease: But if the clause in the Lease be, that if the Rent be behinde for the space of fifteen days next after either of the said Feast days of payment; here the Tenant hath but fifteen days onely allowed him: And so the diversity is to be noted.

If a Tenant in Tail let part of the Land accustomably letten, reserving the Rent *pro Rata*, or more; this is a good Lease for such Lands: Co. 2 part. Inst. f. 44. b. Vide Lord Mount-Joy's case, Co. 5. l. f. 3. Anno 31, 32 El. in B. R.

Or if the accustomable Rent were formerly payable at four Feasts, and now it is reserved and payable all at one Feast, yet it is good enough.

If a man Lease for years, rendring Rent at the Feasts of the *Annunciation* and *Michaelmas*, or within fifteen days after; here, if the Lessor die after either of the Feasts and before the fifteenth days be out, the Heir shall then have the Rent; for the dis-junctive is added for the benefit of the Tenant; and the first day is but voluntary: But the legal pay-  
C pay-

11 Jac. in B. R. Clun's case, Co. 10. l. f. 227. See Hare and Savil's case, M. 7 Jac. in C. B. Brownlo. Rep. 2 part. p. 273. Vide Hern's Law of Conv. p. 22 & 23.



payment is at the end of the fifteen days: And if the Lessee before the day pay the Rent; this is voluntary, and not satisfactory: But it is good to give Seisin, if payment be in the morning, and the Lessor die at noon. Though this payment be voluntary too, yet it is satisfactory against the Heir.

See Manley and Jennings Case, 10 Jac. in C. B. Brownlo. Rep. 2 par. p. 146. No. 5. Maximes, p. 20. 6 El. 6. Br. Tender 30.

If a man Lease for years, rendering Rent at *Martinmas*, and other Covenants, if the Lessee be bound in an Obligation to pay the Rent precisely; in this case he must seek the Lessor to pay him: But if he be bound to perform the Covenants, &c. he may then tender it upon the Land, (if no other place be agreed upon) and it sufficeth, for the payment is of the nature of the Rent reserved.

1 Mar. 172. b. Finch, l. 1. c. 3. p. 37. Noy's Maximes, p. 81. Vide Wades case. 43 El. C. B. Co. 5. l. fol. 118. Hern's Law of Convey. p. 30.

Rent payable at a day, the party hath all the day till night to pay it: But if it be a great sum, as 500 or 1000 pound, he must then be ready as long before Sun-set, as the money may be told; for the other is not bound to tell it in the night.

32 H. 8. Bro. Maximes 17 Finch, l. 2. c. 1. p. 38.

If a Parson let his Glebe to a Layman, the Lessee shall pay Tythes

to

to the Parson besides the Rent, because they are of Common Right.

If a man make Lease for years, rendring Rent at the Feast of St. *Michael*; in this case, if the Lessor die on *Michaelmas* day in the morning, if the Rent be unpaid, the Heir shall have it: But if the Tenant pay it that morning before the Lessor die, the Executors shall then have it.

See Clnn's case, 11 Jac. Co. 101. f. 227.

If a man Lease a stock of Cattle, or other Goods, rendring Rent at several days, he shall not have an Action of Debt, till all the days be expired; and so it is upon an Obligation; for these are Personal Contracts: But in case of a Lease for years, which is a Real Contract, it is otherwise; for there the Lessor may have an Action of Debt after every day, or he may distrain.

Co. 1 part. Inst. f. 47. b. & 292. b. F. N. B. 267.

A man is not bound to pay an Annuity without an Acquittance, but a Rent-service or Rent-charge he is.

See in Pennant's case, 38 Eliz. Co. 3. l. Perkins. 780.

If the King make a Lease, rendring Rent, without limiting any

Vide in Co. 4. l. Boroughs's case, 38 Eliz. in B. R. Co. 1 part. Inst.

f. 201. b. And see Goldsbor. Rep. p. 124. Pl. 9. Hern's Law of Conv. p. 27.

place, or to whose hands, the Lessee may either pay it to the Exchequer, or to the Bailiffs, or Receivers of the King. When a common person appoints no place of payment, the Law appoints it to be upon the Land, and there the Demand must be made, as is shewed afterwards in this Chapter.

5<sup>th</sup> d. 4. 4. Co. 2.  
p. rt. Int. 547.  
Co. 8. 1. f. 70, 71.

If two Joynt-tenants be, and they make a Lease for years by Parol or Deed-poll, reserving a Rent to one of them; yet this shall enure to them both: But if it be by Deed indented, it shall enure to him alone by way of Conclusion.

Trin. 35 H. 8. Dy-  
er 5<sup>th</sup> 2 Mar. Dy-  
er 100. and see  
20 El. Dyer 361.

If a Lease be of Land and Sheep, and the Sheep die, or part of the Land is surrounded with the Sea; some are of opinion, that the whole Rent shall issue out of the rest. *Tamenquare.*

See Goldsbor:  
Rep. p. 93. pl. 17  
Tcin. 30 Eliz.  
Vide Hern's Law  
of Convey. p. 22  
& 24.

If a man Lease Land, and die before one of the Rent days, the Heir shall have the Rent due at the next day after his death; but if there were any Rent arrear at the Rent day, before the Lessors death, the Executors or Administrators shall have that, and may either distrain  
or

or have an Action of Debt for it.

The Lessor upon a Lease at Will, Co. on Lit. f 57.  
may distrain for Rent arrear; but  
if he impound the Distress in the  
ground letten at Will, the Will is  
then determined.

Upon a Lease for years, a man Co. 1 part. Inst. 142.2. and see Perkins, 696.  
may reserve the Rent to be in the  
Delivery of Hens, Capons, Geese,  
Turkies, Oxen, Sheep, Roses, Spurs,  
Bows, Shafts, Horses, Hawks, Pep-  
per, Cumine, Wheat, or other pro-  
fit that lieth in Render, Office, At-  
tendance, and such like, as well as  
in paying of Money.

If the Heir make a Lease for life 7 H. 5. 4. Co. on Litt. f. 42. 2.  
reserving a Rent, against whom the  
Mother recovers her Dower, and  
dieth, the Lessee shall have the Land  
again for his life, and the Rent is re-  
vived.

The Acceptance of the Rent up- 22 H. 8. Br. Ac-  
ceptance 14.  
Vide Browning's  
case, Pl. Co. 136.  
on a void Lease, will not make the  
Lease good again; but if it be one-  
ly voidable, it will.

The Acceptance of a Redemise Noy's Maxims,  
P. 70.  
to begin presently, is a Suspension of  
the Rent before any Entry; but  
otherwise, if it be to be begin *in fu-  
turo.*

See Co. 3. l. in  
Pennant's Case  
there.

Acceptance of a Rent which is not *in Esse*, nor due to him that accepts it, doth not affirm the Lease: as where Lands are given to the Husband and Wife, and the Heirs of the body of the Husband, and he leases the same and dies, and the Issue accepts the Rent of the Lessee in his Mother's life, and after she dies; now the Issue may avoid the Lease, for when he accepted the Rent, it was due to his Mother, and not to him.

24 H. 8. Br. Leases 19. 32 H. 8. Br. Dean 20. Leases 52. See Co. 3. l. fo. 65, 66. in Pennant's Case. See Revel & Hart's Case. Goldsb. Rep. p. 138. pl. 44.

Co. ibid. 2. F. 6. Br. Leases 23. 32 H. 8. Dyer 46.

If the Successor of a Parson or Vicar accept the Rent of a Lease for Years made by his Predecessor, yet it is worth nothing; for the Lease is void by Death: but it is otherwise of a Lease for Life.

But if the successor of a Bishop, Abbot, or Prior, accept the Rent upon a Lease for years, he shall never avoid it; for it was but voidable only, and his acceptance hath now confirmed it.

See Hopkins and Morton's Case vouched in Pennant's Case.

Co. 3. l. Hern's Law of Conv. pag. 40. Co. 1. par. Inst. fol. 373. 2. 12 H. 4. 55. 10 Eliz. Dyer 271.

If he that hath Rent-service or Rent-charge, accepts the Rent due

at the last day, and gives an Acquittance for it, all the Arrearages due before are thereby discharged.

If Tenant in Tail make a Lease for 40 Years, to commence 10 years after his Death, rendring Rent, and after he dies, and the Issue enters and enfeoffs B: the 10 years expires and then the Lessee enters; if B accept the Rent, the Lease is good

Pl. Co. f. 437.  
Co. 1 part. Inst.  
46. b.

If the Husband and Wife let the Land of the Wife for years, rendring Rent, and after the Husband dyes, and she before any day of payment takes another, who accepts the Rent and dies; by this the Lease is affirmed.

Tamen quere. P.  
5 Mar. Dyer. 160.  
and see 4 Mar.  
Dyer 148.  
Gough's Case.

If Tenant for Life lease Lands for years and dies, the Lease is void, and the Rent reserved upon the Lease is determined, and Acceptance by him in Remainder will not make it good; for when it is once void by Death, no Acceptance after will make it good.

If the Husband and Wife let the Lands of the Wife for years, rendring Rent, and the Husband dies, if the Wife accept the Rent, it is a good Lease.

3 H. 6. f. 22. H. 6.  
f. ibid. 21 H. 6. 24.  
& Kitchen p. 234.  
B. Terms of the  
Law, verb. Ac-  
ceptance.



22 H. 8. Br. Tit.  
Auncest. 14.

If Tenant in Dower lease for years and die, the Lease is void, and Acceptance of the Rent by the Heir will not make it good again.

1 E. 6. Br. 18. and  
see Finche's Law  
1. 1. c. 4. p. 68.

If a man seised in Fee let for 10 years, and after selleth the Land, and taketh back an Estate to him and his Wife, and then the Husband and Wife let for 20 years, reserving Rent, and the Husband dieth, the Wife accepts the Rent during the first 10 years; in this case the second Lease is not affirmed, for the Acceptance of the Rent before the Lease beginning, and so before any Rent be due, is no Acceptance at all.

21 Eliz. 563. Philips Plain of Law,  
p. 164.

Noy's Maxims,  
p. 73.

A Lease for Years may be confirmed for a time, or upon Condition, or for a piece of the Land; but if it be a Frank-tenement, it shall enure to the whole absolutely.

See in Pennant's  
case, 38 Eliz. Co.  
3. 1. f.

There is a diversity between a Lease for Life and for Years. In case of a Lease for Life, though the Conclusion of the Condition be that it shall be void, yet acceptance of the Rent due after the breach doth affirm it, and make it good again; for the Free-hold being created by Livery



Livery cannot be determined before Entry.

If a Prebend lease for 70 years, and Patron Dean and Chapter confirm the Demise aforesaid in form aforesaid made for 51 years and no farther; this is a Confirmation of all the Term: but if they had recited the Lease, and confirmed the Land for 51 years, this had been good. But by whatsoever words they confirm a Lease for Life, or Gift in Tail for part, this shall confirm all, because they are intire.

See Foords Case, 37 El. in C. R. Co. 5. l. f. 81.

If the Tenant of the Land and a Stranger joyn in a Lease for Years by Deed indented of the same Land, this is the Lease of the Tenant onely and Confirmation of the Stranger; and yet the Lease as to the Stranger works by Conclusion.

Co. 1 part. Inst. 1.45.2 II H.4.1 27 H. 8 10.

If two several Tenants of several Lands joyn in a Lease for Years by Deed indented, these be several Leases, and several Confirmations of them, and work not by way of Conclusion.

Co. ibid.

If B, who is Tenant for life of C, and he in the Remainder or Re-

Co. ibid. Vid. Trepott's case M. 27 El. in B R. C. B Rot. 14.

Co. 6. l. f. 15. Vide Ell's & Chowne's case 44 l. in

version in Fee, make a Lease by Deed indented; in this case this is the Lease of *B.* during the Life of *C.* and the Confirmation of him in Remainder; and after the Death of *C.* it is then the Lease of him in Remainder, and Confirmation of *B.*: and in this case there is no Conclusion.

Co. 1 part. Inst. f.  
45. 1. 27. 8. 8. 13.  
See Bredon's case  
29 & 40 Eliz. Co.  
1. l. f. 76. Vide  
Dyer 234.

If Tenant for Life and he in Remainder in Fee make a Lease by Deed indented, and the Lessee be ejected during the Term in the Life of Tenant for Life, he must then declare in his Action of a Lease from Tenant for Life; and if it be after his Death, he then must declare of a Lease from him in Remainder.

Mich. 25 H. 8.  
Dyer 58.

If *Cestui que use* make a Lease for 20 Years the first of *May*, to begin at *Mid-summer*, and the Feoffees make a Lease the second of *May*, for 30 years to the Lessee, to begin at *Mid-summer* also; this is no Surrender of the first Lease, but it shall enure as a Confirmation for 20 years, and a new Lease for 10 years.

Vide Co. 1 part  
Inst. f. 300. See  
Dyer 69. See Par-  
sons Law, chap. 4.  
Philipps Pr. of  
Law, pag. 78.

If a Parson let a Lease for years of his Glebe-land, if it be confirmed by Patron and Ordinary, it shall binde

binde the Successor; otherwise not.

If Tenant in Tail lease his Lands <sup>32 H. 8 B. Ac-</sup> for 20 years, rendring Rent, and die, <sup>ceptance 13.</sup> and the Lessee leases to another for ten years, and the Issue accepts the Rent of the second Lessee; this is no Affirmance of the Lease, for there is no privity between the second Lessee and the Issue: contrary, if he accepts it of him as Bailiff of the Lessee.

But if the first Lessee had leased <sup>Bro. ibid.</sup> over all his Term in parcel of the Land let, and his Assignee pays the Rent to the Issue in Tail, who accepts it; this affirms the intire Lease: for Rent upon a Lease for Years is not apportionable.

If a man make a Lease to one for <sup>Dr. & Stud. l. 2.</sup> Life, and after confirm the Estate of <sup>c. 20. f. 93. b.</sup> the Tenant for Life, the Remainder over to *AB* in *F* this is a void Remainder notwithstanding the intent, for no Remainder can depend upon an Estate, but where the Estate begins at the same time when the Remainder doth; and in this case the Confirmation neither enlarged the Lessee's Estate, nor gave him a new one.

But

Dr. & Stud. l. 2. But if a Lease be made to one for another mans life, and after the Lessor confirms the estate to the Lessee for the Lessees own life, the remainder over; this is good, for here the estate is enlarged.

See Cibil and Hills Case, M. 30. Eliz. in C.B. 1 Edwards Rep. 110. Vid. Nov's Max. p 70. & Howe & Broom, Hi. 43 El. Goldsborough Rep. 125. pl. 15. during his holding thereof. & p. 114, pl. 6.

Herne's Law of Conv. p. 118. See in Walker's Case, Co. 3. lib. & see Goddard's Case, Mich. 34 El. Com. Banco. Owen's Rep. fol. 10.

M. 2, 3 El. Dyer 187. & Finch, l. 1. c. 3. p. 13. If there be two Joint-tenants for life, and one let his part for years, rendring Rent, and dies; the Term shall continue against the Survivor, but the Rent is gone.

Per Whorwood & Hales. Br. Extinguishment 54. Leases 63. Surrender 52. If a man have a Lease for years, as Executor to A, and after purchases the Reversion of the Land in Fee; the Lease is extinct, and yet it shall be Assets in the hand of the Executor.

Co. 1 part. Inst. f. 201. b. 40 Aff. 11. re-enter upon their Tenants, to Noy's Maxims, p. 83. Marche's Rep. p. 147. pl. 218. But note, it may be covenanted, that the Lessor shall re-enter without Demand, if both parties please.

make

**I** make demand of the Rent at the House upon the Land, if there be one, ( if the payment be not appointed elsewhere by the Agreement of the parties ) where the Lessor himself or his sufficient Attorney, a little before Sun-set, in the presence of two or three sufficient Witnesses, shall say, *Here I demand of R. A. Ten pound, due to me at the Feast of St. Martin, the Bishop last past; for a Messuage, Barn, &c. which he holds for me in Lease by Indenture for Twenty years, bearing date, &c.* And so remain there upon the Land the last day that the Rent is due to be paid, until it be dark, that he cannot see to tell the money.

But note, this Demand must be made at the Fore-door of the House, and not at the Back-door; for if it be, it is not good, because the Demand must be at the most notorious place, and it is not material, whether any person be there or no: And if the Lessee be in the House, and the door open, yet the Lessor need go no farther then the Fore-door.

49 Ass. 5. 15 El.  
Dyer f. 329. Perkins 838. Co.  
1 part. Inst. f.  
201. b. 153. a, b.  
Hern's Law of  
Conv. p. 28.

If

Dyer 329. 15 El.  
Perkins 838. Co.  
1 part. Inst. f. 202.  
a. & 49 Aff. 5.  
See a pretty Case  
in Poph. Rep. 58.  
upon a Leale of  
two Barns, & the  
Lessor demanded  
at the one, & the  
Lessee did tender  
at the other, and  
it was held to be  
a good tender to  
save a Re-entry.

If there be no House, the Demand must be made at the most notorious place of the Land, as at some High-way, leading through the same; for if it be either at the Back-door of the House, or some obscure place in the ground, it is void, and the Lessor shall not take advantage by such Demand for Re-entry, or breach of any other Condition.

See Kidwel's  
case, Pl. Com. f.  
70. & Borough's  
case, 38 El. in B.  
R. Co. 4 J. f. 73.  
Co. 1 part. Instit.  
f. 202. a.

If the Rent be reserved to be paid at any place from the Land, yet it is in Law a Rent, and the Lessor must demand it at the place appointed by the parties, observing the Rules aforesaid of the most notorious place.

Co. 1 part. Inst. f.  
cod. Perkins 837.  
Hern's Law of  
Conv. p. 29.

But if the Lessee come to the Lessor at any place upon the ground at the day of payment, and tender his Rent to the Lessor; this is good enough, and shall save the Condition, and the Lessor is bound to receive it, although it were not at the most notorious place, nor last instant of the day; for he may tender it at any time of the day, though the last instant be the legal time of payment.

Tr. 23 Car. in B.  
R. Regest. Pract.  
p. 327.

But this Tender must be of the whole Rent, without deduction of Taxes



**Taxes or Assessments, or other Charges.**

Where one Leases Land to another for years, rendring Rent of the Land at the Feasts of St. *Ellenmas* and *Martinmas*, or within 15 days, and for default of payment to Re-enter; in this case it is satisfactory and lawful for the Tenant to tender it the last hour of the last day, if the money may be told in that time; and so it sufficeth for the Lessor to demand it the same hour.

Co. 1 part. Inst. f. 202. a. 30 H. 6 30. See Pl. Com. Hilt and Grange's case, f. 167. 173. and Cranly and Kingiwell's Case, Pasch. 15 Jac. rot. 710. Hobart's Rep. f. 207. Hens Law of Conv. p. 25 & 26 & 29. 6 H. 7 3.

If a man grant a Rent-charge to another with Condition, that if the Rent be behinde for ten days after any Rent day, that the Lessee, the Executors, &c. shall pay 3<sup>s</sup> 4<sup>d</sup> for every day until the aforesaid Rent so behinde, shall be satisfied: In this case the Rent must be demanded, or otherwise the *Nomine Poena* shall never be recovered. *Hobart, fol. 133. Howels Case.*

Vide Trin. 63 El. Thyn & Cholmleys case Goldsb. Rep. p. 116. See Sir Jo. Spencer and Sir John Poynes case, Tr. 5 Jac. in B. R. Godbolt's Rep. 154. and Remington and Kingerbies case, 18 Car in B. R. in Styles Rep 4. Sir Rich Grobham and Thornborough's case. Hobart, f. 82.

If a Lease be made upon Condition of Non-payment to re-enter, if the Lessor distrain he may not re-enter, but he may accept of the

Pennant's case, 38 El. Co. 3. l. 65 Vid. Green's case, 48 El. in B. R. Leon. Rep. 262. & March & Cur-

tie's case, 40 El. C. B. rot. 1302. Vouched in Pennant's case, Co. 1 part. Inst. f. 211. b. Pl. Com. f. 133. Hens Law of Conv. p. 26, & 94.

Rent,



Rent, and yet re-enter; but if he receive the next Rent again, then he cannot, for that establissheth the Lease. Entry into an Acre in the name of all is good enough, if the Land lie all in one County.

38 El. in Pen-  
nant's case, Co.  
3. l. f. 65. & see  
40 El. in C. B.  
Rot. 1302, in  
March & Curties  
case, vouched  
there. Hughes's  
gr. Abr. 1 part.  
p. 14. C. 10.

If a Lease for years be rendring Rent, with Condition, that if the Lessee assign his Term, the Lessor may re-enter; the Lessee assigneth, and the Lessor receiveth the Rent of the hands of the Assignee, not knowing of the Assignment; now notwithstanding the acceptance of the Rent, yet the Lessor may re-enter if he please, for the receiving the Rent bars him not, because he knew not of the Assignment.

28 H. 8. Dyer 7.  
Hughes's gr. Ab.  
1 part, p. 240.  
C. 1.

In a Lease for years, if the Lessee covenant that if he, his Executors or Assigns, do aliene, that then the Lessor shall re-enter, and afterwards he make his Wife Executrix and dies, who takes Husband again, and he alienes; in this case the Lessor may re-enter, for the Husband is Assignee in Law.

21 Car. B. R.  
Styles Regestum  
Practicale, p 196

Vide Hanson & Norcliffs case, Hil: 18 Jac. & Amphurst & Palmer's case, P. 19 Jac. Hobart, f. 331.

A Lease which is onely voidable,

and

and not absolutely void, must be made void by the Lessors Entry; but if it be absolutely void, there needs no Entry.

If a man make a Lease for years, yielding to him and his Heirs, a Rent, upon Condition, that if it be behinde by the space of forty days, &c. that then it shall be lawful to the Lessor and his Heirs to re-enter, the Rent is behinde forty days, &c. and is demanded by the Lessor, (as it ought by Law) and is not paid, and now the Lessor dieth: In this case his Heir may enter, for a Title of Entry descends.

Dr. & Stud. l. x.  
c. 20. p. 35. a.  
See the Clerk of  
Assize, p. 56.

But if the Lessor had died after the Feast-day, and before the fortieth day; and the Heir there makes a Demand at the fortieth day: In this case he may not enter for non-payment. *Ideo nota.*

Dr. & Stud. l. x.  
c. 20. p. 35. a.  
Clerk of Assize,  
p. 57. l

If a Lease be made to *A* and *B* for their lives, and after the Lessor grants the Reversion to *C* for his life; to which Grant *A* Attorns, and after by his Deed surrenders to *C* all his Interest and Estate, and dies. In this case *C* may enter and hold in common with *B*.

Tooker's case,  
43 El. Co. 2. l.  
fol. 39.

Vide M. 27 E. 3. 87, Tr. 1 H. 7 31. & Perkins 52. And see 29 El. in Boraston's case, Co. 3. l. fol. 19. 32 H. 6. Tit. Feoffment & Feits, 99 & Co. on tit. 1. 378. 2. See the Clerk of Assize, p 60. & Hern's Law of Conv. p. 8, Kitchin, fol. 155. 2.

If a Lease be made to *A* for life, and after the Death of *B*, the Remainder to another in Fee: In this case, if *A* die, living *B*, the Remainder is void: And so if a Lease be made to *R* for life, the Remainder to the right Heirs of *I S*; this is good if *R* outlive *I S*, otherwise it is void.

9 El. Dyer 254: & see Pl. Com. 190. Trin. 8 el. Cecil's case, Dyer 253.

If a Lease be made to *A* for 41 years, if he live so long; and if he die within the aforesaid Term, that then the Wife of the aforesaid *A* shall have it for the residue of the said years; this Limitation is void; for if *A* die, the Term ends, and the Wife shall have nothing.

Pasch. 14 El. Dyer 307.

If a man have an House for forty years, and devise the House to *I S* without limitting any Estate, the Devisee shall then have the intire Term, for he may not have for life, nor at Will, nor for lesser Term of years.

Br. Leases 66. & see the Rector of Cheddington's case, 40 El. Co. 1. l. fol. 153.

But if a man have a Term of thirty years, and grants so many of them as shall be behinde at his death; this is void for the incertainty; for he may live till all be out, and then nothing remains.

See Dyer f. 80. in the questions there for the L. Willoughby.

If a man let all his Meadow in *D*, contain-

containing ten Acres ; in this case, if there be twenty Acres, all pass.

There needs no Livery and Seisin upon a Lease for years, but the Lessee may enter when he will ; and if there be Livery and Seisin upon such a Lease, to have according to the effect thereof ; this Livery is void, and the Lessee shall but have an Estate for years.

A man makes a Lease for years, & after makes a Deed of Feoffment, and delivers Seisin, the Lessee being upon part of the premises, and not knowing nor assenting to it ; this Livery is void : For though the Lessee hath the Free-hold and Inheritance in him, yet the possession is in the Lessee, and Livery must be given of the Possession : But if the Lessee be absent, and hath neither Wife nor Servants (though he have Cattle upon the ground) then the Livery shall be good.

If a man let Lands or Tenements by Deed, or without Deed, for term of years, the Remainder over to another for life, in Tail, or in Fee : In this case, Livery of Seisin must be given by the Lessor to the Lessee for years,

Littl. l. 1. c. 7.  
Vide Hern's Law  
of Conv. p. 35.

Co. 1 part. Inst.  
f. 48. b. See Bet-  
tsworth's case,  
33 El. in C. B. Co.  
2. l. f. 31. & see  
Hern's Law of  
Conv. *ubi supra*,  
& p. 36.

Littl. l. 1. c. 7.  
Vide Philips P  
of Law, p. 94.

vide M. 27 E. 3.  
99, Tr. 1 H. 7 31.  
& Perkins 12.  
And see 29 El. in  
Barston's case.  
Co. 3. l. fol. 29.  
22 H. 6. Tr. Feof.  
mens & Feits, 99  
& Co. on tit. 1.  
378. a. See the  
Clerk of Assize,  
p. 60. & Hern's  
Law of Conv. p. 8. Kitchen, fol. 155. a.

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9 El. Dyer 254:  
& see Pl. Com.)  
190. Trin. 8 el,  
Cecil's case, Dy-  
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*Littl. l. 1. c. 7.  
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*Co. 1 part. Inst<sup>d</sup>  
f. 48. b. See Bet-  
tisworth's case,  
33 El. in C. B. Co.  
2. l. f. 31. & see  
Hern's Law of  
Conv. ubi *suprà*,  
& p. 36.*

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*Littl. l. 1. c. 7:  
Vide Philips P  
of Law, p. 94.*



years, otherwise nothing passeth to them in Remainder : The Reasons you have before in this Chapter.

Co. 1 part. Inst.  
f. 49. b.

If the Lessee enter before Livery and enjoy, then the Freehold and the Reversion are still in the Lessor, and he cannot then make Livery to the Lessee after Entry ; for he is then in Possession, and Livery cannot be made to one in Possession.

Co. 1 part. Inst.  
f. 45. a. & Rastals  
Recoveries 2. f.  
571. a. Wingates  
Abr. Stat. p. 405.

The Statute of the 21 H. 8. 15. gives liberty and power to falsifie all Recoveries that shall be had against the Tenant of the Freehold, through the knavery of the Lessors, intending thereby that the Lessees shall be outed before their Term be out ; when as perhaps they paid a great Fine at their Income, and so it were an hard case if they should lose their Terms upon such Recoveries by Collusion.

#### CHAP. IV.

*Of the Dates, Commencements, Continuance, and Determinations of Leases.*

Co. 1 part. Inst.  
fol. 45. b.

**L** Leases for Life or Years are of three Natures. Some be good in



in Law; some voidable by Entry; and some void without Entry; some *in futuro*, and some *in presenti*: Of all which you have several examples in this little Treatise.

If a Lease be made for three years beginning from hence forth, and is deliver'd the nineteenth day of *June* 1663. In this case, the day must be taken *inclusive*, and the Lease must end the 18 day of *June*, in the third year after. But if a Lease be made to hold from the day of the making, or from the day of the date, or from the date: Here the Lease shall begin the day after it is delivered, and the day of the delivery is exclusive; and so note the diversity.

See Clayton's case, 37 Eliz. in C. B. Co. 5 l. f. 1 12 Eliz. Dyer 286. 14 El. Dyer 307. Co. 1 part. Init. f. 46. b. Noy's Maxims, p. 66. But see Osborn and Riders case, Hil. 13 Jac. in B. R. Cro. 2 part. 135. See Barwick's case, 39 El. in the Exchequer. Co. 5. l. f. 93. Hern's Law of Conv. p. 14, & 15.

If the *Habendum* of a Lease be for the term of 21 years, without mentioning when it shall begin, it shall then begin from the Delivery.

Co. 1. part. Inft. ibid. Hern's Law of Conv. p. 145 & 131.

If an Indenture of Lease bear date the 30 of *Feb.* or 40 of *March*, which is impossible; in this case, if the term be limited to begin from the date, it shall then begin from the delivery, as if there had been no date at all.

Co. ibid. See Goddard's case, 26 El. Co. 2 l. f. 5. See Mich. 8 Jac. B. R. Ofley & Sir Baptist Hick's case, Cro. 2 part. 263, 264. there being pretty matter

concerning the Date and Delivery of a Deed. Hern's Law of Conveyances, *ubi supra*, & p. 132.

If

Noy's Max. p.  
67.

If Lands descend to an Heir, he may make a Lease thereof before his Entry into the same.

Ibid. p. 68. 26 H.  
8. Bro. Lease 48.

If a man make a Lease to one for 10 years, and the next day after make another for 20 years to another man: This second Lease shall be good for 10 years after the first is expired.

Co. 1 part. Inst. f.  
45. b. & see 49 El.  
in the Rector of  
Cheddington's  
case, Co. 1. lib. f.  
154. and Heir's  
Law of Convey.  
p. 135.

If a Lease be made for 21 years, and after another Lease to commence from the end and expiration of the said term of years, and after the first Lease is surrendered; in this case, the second Lease shall commence presently upon the surrender. But if it had been to commence from the end of the said 21 years; there, though there had been a surrender, yet it should not have commenced till the term had been out: And so note a diversity between *Terminus Annorum* and *Tempus Annorum*.

See the 39 El. in  
Barwicks case,  
Co. 5. l. f. 93.

A man cannot make a Lease for life, to commence at a day to come, for he cannot make a present Livery to a future Estate, and therefore in this case nothing doth pass.

Co. 1 part. Inst. f.  
45. b. See many  
pretty cases in  
the B. of Bathe &  
Wells case, Co.  
6. l. f. 34, 35.

If *A* seised of Lands in Fee, do grant to *B*, that when he pays him

20<sup>s</sup>, that then from that time he shall have and occupy the Land for 21 years, and after *B* pays the 20<sup>s</sup>; this is a good Lease for 21 years from that time, notwithstanding the Rule of *Bracton*, That every Lease must have a certain beginning and ending; *Quia id certum est, quod certum reddi potest.*

And so if a man Leases Land to another till the Lessee hath levied 20 pound: This is a good Lease, notwithstanding the uncertainty.

If a man make a Lease to another for so many years, as *R. A.* shall name, this at the beginning is uncertain; but when *R. A.* hath named the years, it is then good for so many years as he names.

Co. 1 part. Inst. f. 45. b. See *Gay & Fuller's case.*  
Pl. Co. Kitchin, p. 235. b. Vide *Philip's Pr. of Law*, p. 36.

If *A* leaseth his Lands to *B* for so many years, as *B* hath in the Mannor of *Sale*, and *B* hath 10 years in it: This is a good Lease to *B* of the Lands of *A* for the said 10 years.

Co. 1 part. Inst. f. 45. b.

But if a Parson make a Lease of his Glebe for so many years as he shall be Parson there, this is void for the uncertainty; for *Terminus vite est incertus, & licet nihil certius est morte, nil tamen incertius est hora mortis.*

Co. ibid. So resolved Hil. 26 El. Rot. 935. in C. B.  
Brac. 1. a. c. 9.

IF

Co. ibid.

If a Parson make a Lease of his Glebe for three years, and so from three years to three years, so long as he continues Parson; this is a good Lease for six years, and void for the Remainder: But this must be understood, if he continue Parson so long.

See in the 40 El.  
in the Rector of  
Cheddingtons  
case, Co. 1. 1.

If a Lease be made to one for so many years, as his Executors shall name; this is void for the incertainty.

Noy's Max. p.  
66.

A Lease for a year, and so from year to year during the life of *R. A.* is a Lease but for two years; and if the Termor stay longer, he is afterwards but Tenant at Sufferance.

33 Aff. p. 2. 2 M.  
1. Br. Leases 67.  
Co. 1 part. Inst.  
c. 42. 2.

If I make a Lease to *R. B.* to hold the Lands till one hundred pound be paid, and make no Livery of Seisin; he hath an Estate but onely at Will, and maybe put out at pleasure: But if Livery be given, he hath an Estate for life, upon Condition implied, to cease upon the payment of the one hundred pound.

24 H. 8. 16. Noy's  
Max. p. 66. Br.  
Le. sc 12. 22.

A Lease from year to year, so long as both parties please, is a good Lease after Entry in any year for that year, till warning be given to depart.

If

If a Lease be made to *A*, and his Assignes for his Life and the Life of *B* and *C*; this is a good Lease for three Lives.

See Rosse's case, 42 El. Co. 5. l. f. 13. Herne's Law of Conv. p. 12.

But if a Lease be made for an hundred years, if *A* and *B* live so long; in this case, if either of them dye, the Lease is ended.

See in Co. said 9. Book, in Brudenel's ca. 34 El. in B. R. & see Brownl. 2 part, p. 292.

A Lease rendring Rent to one and his Heirs, or his Heirs alone, but of a Feoffment *Tenendum* to one or his Heirs, is but an Estate only for the Life of the Feoffee.

See Co. 5. l. f. 11. in Mallery's ca. 43 Eliz. Herne's Law of Conv. p. 142.

If a man make a Lease to commence after the end or determination of a former Lease *in esse*, and after the first Lease is out, and the second Lessee entreth not, but he in the Reversion enters, and makes a Feoffment, and levieth a Fine with Proclamations, and 5 years passe without Entry or Claim of the second Lessee; in this case the Fine barres him: for the Stat. 4. H. 7. c. 24 speaks of interest, and a Lease for years is an Interest within the Statute.

See 3. Jac. Savin's ca. in C. B. Co. 5. l. f. 123.

If an Infant, who is seised of Land held in Socage, make a Lease at his age of 15; this is good,

Co. 1 part Inst. f. 45. b.

good, and shall bind him.

20 F. 3. 26. 34.  
 Aff. 15. 23 E. 3.  
 Dower 130. Co. 1  
 part Inst. f. 46. 2.

If Tenant in Tail make a Lease for Years according to the Statute, rendring Rent, and die without Issue, now as to him in the Reversion the Lease is void; but if he endow the Wife of that Land, it shall be good against her: or if Tenant in Tail die without Issue, his wife *enfeint* with a Son, and he in Reversion enters, and after the Wife is delivered; in this case the Lease is again revived, although it were once void by the Entry of him in Reversion. *Nota.*

Co. 1 part Inst.  
 f. 46. 2.

If Tenant in Fee take a Wife, and make a Lease for Yeares, and after die, and the Wife is therefore endowed; here she shall avoid the Lease, but after her Death it shall be in force again against the Heir.

Idem ibid. b. &  
 fo. 351. a. Mich.  
 26, 27 El. adjudg-  
 ed in both Courts  
*enter Amnor &  
 Loddington.*  
 And see 7. Jac. in  
 Manning's case.  
 Co. 8. l. f. 94.

If an Husband have a term of years in Right of his Wife, if she die, it remains to him; but if she survive him, it remains to her, and not to his Executors, without he make disposition of it in his lifetime. 14. El. Pl. Com. 419.

37 H. 8. Br. Lea-  
 ses 48. the end.

If a man lease for Life to I. S. and  
 the

the next day leases to *W. B.* for 20 years; the second Lease is void, if it be not a Grant of a Reversion with Attornment; for in Law the Free-hold is more worthy and perdurable than a Lease for Years: yet if the Lessee for Life die within the Term, the Lease for Years is good for the rest of the years to come.

If a man license another to enter and occupy his Lands, this is a good Lease for Years in Law.

*Brownl.* 2 party  
p. 250. 10 E. 4.  
f. 4. 5 H. 7. f. 1.

If a man lease for 60 years, and so from 60 years to 60 years, untill 200 years be ended; this is all the same Lease, and good for the term.

*Pl. Com. f. 273. 29*  
*H. 8. Br. Leases*  
49.

If a man have a Lease for 500 years, it is but a Chattell, notwithstanding the long time.

32 1. Aff. 6.

A Lease for Years, though it be never so long, cannot be Intailed, for the nature of a Chattell cannot be turned into an Inheritance.

*Hil. 23. Car. in B.*  
*R. Styles Regest.*  
*Practicle, p. 197*

If a man seised of Land in Fee-simple make a Lease of the same to another, To have and to hold the same for term of Life; and do not mention whose Life; in this case it shall be taken to be for the Lessee's

*Co. 1 part Inst.*  
*f. 42. 2. Vid. Phillips*  
*11. of Law,*  
*p. 88.*



Life; for the Act of every man shall be taken most strongly against himself.

Co. ibid. & f. 183  
1. Finch. l. 1. c. 4.  
1. 60.

But if Tenant in Tail let such a Lease without expressing whose Life, it shall be taken to be for the Life of the Lessor.

14 H. 8 f. 1. Finch,  
1. 1. c. 5. p. 67.

A Lease for a thousand dayes is a Lease for Years.

Finch, eod. loco.  
Co. Lit. f. 207. a.

A Lease for Years, and a Release, amounteth to a Feoffment.

Finch, l. 1. c. 3. p.  
97. Mich. 3. Eliz.  
Dyer. 187. Lit. 1.  
3. c. 3. Co. 1 part  
Inst. f. 185. a. &  
186. a. b. But see  
Dyer f. 178. Har-  
bin & Barton's  
case, Goldsb. p.  
187. pl. 130.

If Joynt-tenant make a Lease for years of his part, though the Lessee never had possession, or though it be to begin at a day to come, and the Joynt-tenant which made it die before the day; yet the Survivor shall be bound by the Lease, for the Lessee hath a present Interest.

Co. 1 part Inst. f.  
184. b. Finch, ibid.  
5 El. Pl. 203.  
Brownl. Pl. Com.  
263. b. in Dame  
Hales case.

But it is otherwise of a Grant to have a Lease, if the Grantee pay 10 pound before *Midsummer* next, and the Joynt-tenant which made the Grant die before the day; for here is no Interest at all, but a Communication till the mony be paid.

Finch, l. 1. c. 3.  
p. 113. Lit.

If a man let Land for Life, without saying more, the Reversion of the Fee-simple is in the Lessor.

Idem ibid. Br.  
Foris. 95.

If Tenants for Life or Years of Land

Land make a Feoffment in Fee, and give Livery, they forfeit their terms.

If two make a Lease for their Lives, and make partition; either of them dying, his part immediately reverts to the Lessor.

See Farrington's case, Dyer 67. & Cowell's Inst. p. 199.

If a Lease be made to a Feme sole for 40 years, if she so long live sole and continue unmarried; now if she die, the Lease is determined: or if I make a Lease for 40 years, if the Lessee dwell upon the thing let during the Term; here if the Lessee die, the term is determined.

See Sayes and Hardye's case, Goldsb. p. 179. pl. 112.

But if it be a Lease for 40 years, if the Lessee dwell upon the thing let during his Life; in this case if the Lessee dieth, the Lease continueth.

Idem in Saye's & Hardye's case.

If there be two Joynt-tenants for Life, and the one make a Lease for 80 years, to begin after his death, and after dies; this is a good Lease against the Survivor.

Harbin & Barton's case, 30 El. Goldsb. Rep. 189 pl. 130.

If a Lease be made to the Husband and Wife, yielding a greater Rent than the Land is worth; in this case if the Husband die, the Wife may refuse the occupation of the Land, and so be discharged of

Brownloe's 2. part. p. 206. the end. Dr. & Stud. l. 2. c. 33. f. 120. a. b. See Cowell's Inst. p. 193.

the Rent: but if the Husband overlive the Wife, and die, his Executors, if they have Assets to pay the Rent to the end of the term, may not refuse the Lease; but if they have not Assets, they may wave the occupation, and by special pleading discharge themselves.

Pinch. 1.1. c. 2.  
p. 31. 4 E. 6. 68.  
b. See Co. 5.1. in  
Brudenel's case.

If a Lease be made to A and B for their Lives, in this case if either die, the other shall have all during his life, for it is an Interest. *Philipps Pr. of Law*, 131.

Henstead's case,  
36, 37 El. C. B. Co.  
5.1. f. 10. See M.  
37 El. in C. B. rot.  
1634.  
3 H. 8. Vid. Keil-  
waye's Rep. f. 162  
& Terms of the  
Law, verb. *Coun-  
tymand.*  
Co. 1. part of  
Inst. f. 55. b.

If a Woman make a Lease at Will reserving Rent and after take Husband, yet the Lease at Will continues still: and if a Feme sole, who is Lessee at Will, take Husband, yet the Lease at Will is still good.

If Husband and Wife make a Lease at Will of the Wives Lands, reserving Rent, and the Husband dieth, yet the Lease at Will continueth: and so it is if two make a Lease at Will to two others, if either one of the Lessors or Lessees die, yet the Lease is good.

27 H. 6. 3. 22 F. 1.  
5. Co. 1 par. Inst.  
f. 57. a. 12 E. 4. 12.

If Tenant at Will lease for Years in his own name, it is a Disseisin, and the Lessor may have Trespass against

against the Grantee of the Lessee at Will.

If a man lease to one at Will, and the Lessor dies, the Will is gone. 21 H.6. f.42. Kitchin, 237.2.

If I let Lands in which are Mines or Trees, I cannot enter to take the Trees or Mines, but am a Trespasser, unless I reserve such a priviledg to my self when I let the Lands. 9 E.4. f.37. per Needham.

All Feoffments, Gifts, Grants and Leases made by Duress of Imprisonment are voydable, and that not onely by the parties themselves, but by their Heirs, and by those who have their Estates. Perkins 16. Co. on Lit. f. 253. b. 14. Aff. pl. 20. Plo. 18. a. Vide Phillips, Principles of Law, p. 4.

If the Lessor come upon the ground leased, he is no Trespasser, for it shall be intended that he came to see if Wast were done. Finch, 1. r. c. 3. p. 57. Vid. Hunt & Downam's c. se, Pasch. 16. Jac. B. R. Cro. 2. part. 478.

Although a Lessee for Years do lose his Indenture of Demise of the Lands let unto him, yet he shall not lose his term in the Lands let by Indenture which is lost, if it can be proved any way that there was such a term let to him by Indenture, and that it is not determined: and so it is of any other Estate in Land, if the Deed that created the

D 4.

Estate

Styless Regestum Practicale, p. 198. Pasch. 1650. in B. R.

Estate be lost, if it can be sufficiently proved that there was such a Deed made, and that such an Estate was conveyed by Deed.

If Tenant for term of years or any other Tenant be outed, or if they die, their Executors, or they if living, shall have reasonable time, and free liberty to come and fetch away their Ustensils, and other goods out of the Lessor's House.

## CHAP. V.

*Of Corn sown where the Tenant is outed, or the Term determines before it be ripe, who shall have it: and also of Estovers, and Trees blown down, &c.*

Metz. l. 3. c. 46.  
Co. 1 par. Inst. 6.  
35. 2. 11. H. 4. f. 90.  
Vide Philipps Pr.  
of Law, p. 86.

**I**F Tenant at Will sow the Land, he shall have free liberty to come and cut, and carry away his Corn, although the Lessor put him out before it be ripe.

Co. on Lit. f. 55. 2.  
b. Lit. ch. Tenant  
at Will. See the  
Clerk of Assize,  
p. 62.

But if Tenant for Years sow the Land, and his term end before the Corn be ripe, the Lessor shall have it, without it be covenanted between them, that he shall have his way.

way-going Crop, as they call it in *Yorkshire*: and the reason of this is, because the Tenant did know when his term would end, and it was his folly to sow Corn that would not be ripe till the term were expired.

If Lessee at Will set Roots, or sow Hemp or Flax, or any annual profit, if after they be planted, the Lessor out him, or if the Lessor die, yet the Lessee or his Executors shall have that year's Crop.

*Co. ubi suprad. 18  
E. 4. 18. 10. Ass.  
pl. 6.*

But if he plant young Fruit-trees, or young Oaks, Ashes, Elmes, &c. or sow the ground with Acorns, if he be outed by the Lessor, he shall have none of these, because they yield not present annual profit.

*Co. ubi suprad.  
Temps E. 1. Br.  
25.*

Every Tenant that hath an Estate incertain shall have the Corn sown by him, though he be ousted before it be ripe.

*Co. ibid. 7. Ass. 19.*

If Tenant for Life soweth the ground, and dye before the Corn be ripe, his Executors shall have it, and Grass, if it be cut; but not Meadow unmown, for that is part of the Inheritance till it be severed.

*Co. ubi suprad. 10.  
E. 3. 29. See in Sir  
Henry Knivett &  
Pool's case.  
Goldsbrough's  
Rep. p. 143. pl. 60.  
& Co. 5. l. f. 85.  
See the Clerk of  
Assise, p. 60.*

The like Law is of the Lessee for Years of Tenant for Life.

*Co. on Lit. f. 55. b.*



Co. ib. 7 Aff. pl.  
10. Perkins, 518.  
Swinburns Wills,  
3 part, sect. 6. p.  
163. Dyer, 316. 8  
Aff. 21. Vide Pa-  
cis Consultum, P.  
83.

If a man be seised of Land in right of his Wife, and sow the Land and die, his Executors shall have the Corn; but if they be Joynt-tenants of Lands, and the Husband soweth the ground and dieth, the Wife shall then have it.

If *A* lease Land for the life of *B*, and sow the Land, and before the Corn be ripe *B* dies, yet notwithstanding *A* shall have the Corn, for his Estate was determined by the Act of God.

Cowell's Inst. p.  
141. Fulb. par. i.  
37. b. Perkins,  
513. Swinburn  
ubi supra.

The same Law is of a Woman Tenant for Life or in Dower, who takes Husband, and he sows the Land, and before the Corn be ripe the Wife dies.

V. Oland's Case,  
44 El. in B. R. Co.  
5. l. f. 116. & Co.  
on Lit. f. 55. b.  
Vid. Goldsb. Re.  
p. 189. pl. 136.  
Hern's Law of  
Conv. p. 239.

But if a Woman who holds Lands *durante viduitate sua* sow the ground, and then take Husband, here the Lessor shall have the Corn: and so if Tenant at Will sow the Land, and then will occupy the Land no longer, he shall lose the Corn: and the reason of this is, because that the determination of their Estates grew by their own Act.

Noye's Maximes,  
p. 75. Vid. Stat.  
32 H. 8. ch. 28.

A Lease made by the Husband alone.



alone of the Wives Land is void after his death; but if the Lessee have sown the Land, he shall have the Corn.

If there be Land-lord and Tenant, and the Land is recovered by a Title paramount against the Land-lord; in this case if the Tenant have sown the Land, he that recovered shall have the Corn, if it be not severed before Judgment.

Tr. 37 H. 6. 35.  
Perkins, 515. Co  
well's Inst. p. 142

Note that to every Tenant for Life or Years the Law, as incident to his Estate, giveth him, without provision of the party, three kind of Estovers; that is *Houſebote*, which is two-fold, viz. *Estoverium ædificandi & ardendi*, that is, for repairing the Houses and burning; then *Ploughbote*, that is to say *Estoverium arandi*, that is, for mending his Ploughs, Harrows, Wains, and making Rakes and Forks for getting his Hay; and lastly *Haybote*, and that is *Estoverium claudendi*, and this is for repairing and mending his Stack-bars, Gates, Stiles and Hedges: but these Estovers must be reasonable. *Bote* in the *Saxon* tongue, and *Estovers* in the *French* tongue:

Brac. l. 4. f. 222,  
231, 232, Fleta,  
l. 4. c. 19, 25, 26,  
27. F. N. B. 180.  
21 H. 6. 46. 10 E.  
4. 3. Vidé Luttre-  
rel's case, 43 El.  
in B. R. Co. 4. l. f.  
86, 87. Terms of  
the Law, verb.  
*Haybote*, & verb.  
*Firebote*, and  
*Houſeb* & Philips  
Pr. of Law, p. 65.

tongue, in this case are all of one signification, that is, to have Compensation or satisfaction for these purposes.

See on Lit. f. 41. t.

These Estovers the Lessee may take without the Assignment of the Lessor, unless the Lessee be restrained by special Covenant, for *Modus & conventio vincunt legem.*

Finch, l. 1. c. 3. p. 15. 12 El. 381.  
5 H. 7. 1. 7. gr. 58.  
P. 26 H. 8. 4. Perkins, 104. Kitchen, f. 51. 2.

Estovers granted to be burnt in such an House, shall go to him that hath the House by whatsoever Title; for one is inseparably incident to the other.

Vide. Co. 4. l. 31  
El. in B. R. in Har-  
lackenden's case  
there; & Co. II. l. 1.  
in Lewis Bowles's  
case, 13 Jac.

If Tenant for Life or Years cut down Trees, or pull down Houses, or suffer them to fall; the Lessor shall have the Trees and Timber of the said Houses, for the Lessee had them only as things annexed to the Land, and he shall not have a greater Interest in them by this tortious Severance.

Vide. Co. ubi su-  
pra, & 16 El. Dyer  
332. F. N. B. 59 M.  
20 E. 3. Wast. 32.

If Timber-trees be blown down by the wind, the Lessor shall have them, for they are parcel of the Inheritance, and not the Tenant for Life or Years, unless it be to build withall, where Houses are in decay: but if they be Dotards without any  
Timber

Timber in them, then the Tenant shall have such when they are blown down

Lessee for Years or for Life, Tenant in Dower or by the Courtesie, have only a special Interest or property in the Trees, as a thing annexed to the Land so long as they are annexed thereunto; but if they or any other sever the Trees from the Land, then their Interest is determined, and the Lessor may take the Trees as things that are parcel of his Inheritance, the Interest of the Lessee being determined.

Co. ubi supra.  
Noye's Max. p. 63.

## CHAP. VI.

*Of Distresses. Of what things a Distress may be taken, and how it must be used, &c.*

**T**He word *Distress* is a French word, and in *Latine* it is called *Districcio sive Angustia*, because the Cattel distrained are put into a Streight, which we call a Pound.

A Distress must be of a thing whereof a valuable property is in some body; and therefore Dogs, Bucks, Does, Conies, and the like that

14 H. 8. 25. 2 E. 2.  
Tit. Distress. 6 R.  
2 Rescous II. Co.  
ib. f. 42. a. Dr. &  
Stud. L. 1. c. 5.

that are *feræ nature*, cannot be distrained, nor an Horse when a man or woman is riding on him, nor an Ax in a man's hand cutting of wood, for they are for that time privileged.

22 E. 4. 36. 7 H. 7.  
1. b 22 E. 4. 49 b.  
Co. ib. & Noye's  
Max. p. 43. Comp.  
Attorney, p. 124.  
Terms of the  
Law, verb. *Distress*.

Neither can things which are for the maintenance and benefit of Trades be distrained for Rent; as an Horse in a Smiths Shop, nor an Horse in an Inn, for the Rent thereof, nor the Materials in a Weaver's Shop for making of Cloth, nor Cloth or Garments in a Tailor's Shop, nor Sacks of Corn or Meal in a Mill, for the Rent of the Mill, nor any thing that the Lessee hath distrained for damage feasant, for it is in the Custody of the Law.

Co. on Lit. f. 47. a.  
51 H. 3. Stat. de  
Distractione Scacc.  
car. Br. l. 4. f. 217.  
F. N. B. 90. a. Fle-  
ta, l. 2. c. 21. 14 H.  
8. f. 29. Finch, l. 2.  
c. 6. p. 135.

A distress may not be taken of Oxen of the Plough; nor a Mill-stone, though it be raised up to be picked, so long as it lies upon the other stone; nor Sheep, if there be a sufficient Distress besides; neither may a man sever Horses joyned together, or to a Cart.

Co. ib. 18 E. 3. 4.  
2. 11 H. 7. 14. a.  
21 H. 7. 39. b.  
Terms of the  
Law, verb. *Distress*.

Nothing shall be distrained of which the Sheriff cannot make a Replevin, or that cannot be restored.

ed again in as good a plight as it was at the time of the Distress taken.

Victuals nor Sheafs or Shocks of Corn cannot be distrained: but Chariots or Carts with Corn may either for Rent or for Damage feasant.

Co. ib. 21 E. 4.  
50. b. 2 H. 4. 15. &  
Finch, 1. 2. c. 6. p.  
135.

No man may be distrained by the Utenfils or Instruments of his Trade, as the Ax of a Carpenter, or the Books of a Scholar.

Co. ibid.

Neither can Furnaces, Caldrons or the like fixed to the Free-hold, nor Fats fixed for a Dier's pan, although the Lessee may remove them during the term, nor the Windows or Doors of the House whilest they are on the Hinges, &c. be distrained.

Idem, f. 47. b. 2.  
H. 7. f. 13. 3 E. 3.  
21 H. 7. 26 Aff. 49.  
9 Finch, ubi su-  
pra. Complet.  
Att. p. 124.

But if they be removed from off the Hinges, they may be distrained.

Finch, ubi supra.

The Lord cannot distrainables dormant in the House of his Tenant, nor any thing which cannot be attached in an Affize.

21 H. 7. 26. Kitchen, 63. a.

A man may distrain the Beasts of a Stranger that come by Escape, for Rent, though they have not been Levant and Couchant on the ground, saith my Lord Cook.

Co. 1 par. Inst. f.  
47 b. 7 H. 7. 1. b.  
10 H. 7. 21.

The

3 H.7.f.4. Kit-  
chin, f.61.b. Vide  
Go. norfall and  
Wayt's case, M.  
8 Jac. in B. R.  
Cro.2 part, 255.

The Lord may sell a Distress ta-  
ken for an Amercement in a Court-  
Leet, as the King may sell the Di-  
stress, because it is a Court of the  
Kings.

10 H.7.f.21. Kit-  
chin, f.62.a.

The Lord cannot distrain ano-  
ther mans Horse in the house of  
one amerced; nor the Robe of ano-  
ther in a Taylors Shop, where the  
Taylor is amerced.

Finch, 1.2.c.6. p.  
227.9 E.4.f.2.b.  
Kitchin, f.207.b.

If a man distrain goods or Chat-  
tels, he may put them where he  
will, either in Pound, covert or  
overt: but if they take any harm,  
he must answer for them.

Co. 1 part Inst.  
f.47. b. Dr. &  
Stud. 1.2.c.27.  
Compl. Attor-  
ney, p.125. Fleta,  
1.2.c.20. F.N.B.  
29 Terms of the  
Law, verb. Di-  
stress.

But if they be living Cattel they  
ought to be put in a common  
Pound, or else in some open place,  
as in his own Close, or anothers by  
his consent, so that the Owner may  
come lawfully to feed them: and  
notice must be given to the Owner  
where they are, if they be not in a  
common Pound; and then if they  
die, it is in the Owners default: but  
if they be in a Pound covert, or out  
of the County, and die for want of  
meat, then he that distrained shall  
answer for them.

20 H.7.f.39. Kit-  
chin, f.207.a.

Cattel taken Damage-feasant  
may

may be impounded in the same ground where they are Damage-feasant; but Goods or Cattel taken for other things may not.

No man may drive a Distress out of the County where it is taken, nor out of the Hundred, but to a Pound overt within 3 miles; neither may a Distress be impounded in several places, nor above 4 pence taken for the Fees of impounding one whole Distress, on pain of five pound.

Co. 1 par. Inst. f.  
47. b. Marlbridg.  
c. 4. West. 1. c. 16.  
2, 3. P. & M. c. 12.  
Vide Berdiley &  
Pilkinton's ca.  
Goldsb. Rep. p.  
100. pl. 5. & p.  
145. pl. 62. Par-  
tridge & Naylor's  
ca. See Mich. 24  
Elin C. B. God-  
bolt's Rep. 11.

Rastal Tit. Distresses 11. Wingate's Abr. p. 133.

If a man distrain Beasts Damage-feasant, and put them in the Pound overt within the same County not above 3 miles out of the Hundred, and the Owner suffers the Beasts to die for lack of meat; then he that distrained them is at his liberty to take his Action of Trespass.

Dr. & Stud. 1. 2.  
c. 27.

If the Owner of the Cattel tender amends to him that distrained, and he refuse it, yet the Owner may not take his Cattel out of the Pound; for if he do, a *Parco fracto* lieth against him.

Idem ibid. & Kit-  
chin, f. 107. b.

But after such tender he may sue out a Replevin, to have them out; and

Idem ibid.



and if it appear, when they come to a Trial, to the Jury that the Tender was sufficient, then the Owner shall recover Damages in the Replevin against him that distrained, for detaining the goods; and if on the contrary it appear that the Tender was not sufficient, then the Avowant, that is he that distrained, shall have such Amends as the Jury shall assess.

Dr. & Stud. l. 2. c.  
27. Kitchin, f.  
207. b.

If after such Amends tendered the Cattel die in such Pound overt, the Owner shall be at the loss, by reason of the wrong done at the beginning, to see that they shall have meat so long as they be in Pound.

*Idem ibid.*

But if the Owner of the Cattel procure a Replevin to deliver them, and he that distrained resists it, and will not deliver them; in this case, if they die after for want of meat, it is at the peril of him that distrained, and the owner shall recover Damages against him in an action upon the Statute, for disobeying of the Kings Writ.

Compleat At-  
torney, p. 193. 21  
E. 4. f. 19. Kit-  
chin, f. 208. b.

If I send my Servant to take a Distress for a Rent or Service, who puts

puts it in the Pound, if the Owner of the Beasts or a stranger take them out, I shall have a *Parco fracto*; for it is my Pound, and not my Servants.

If I impound Cattel taken upon a Distress in a friends Close with his license, and the Owner of the Cattel take them out; in this case I shall have a *Parco fracto*, and my friend an Action of Trespass for breaking his Close.

Idem ibidem. F.  
N.B. 100. Finch.  
1.4.c.16.p.310.

# CHAP. VII.

*Who may take a Distress, and for what cause, and when, and where.*

**A** Man may distrain of common right for Rent-service, Homage, Fealty, Escuage, Suit of Court, &c. or for a Rent reserved upon a Gift in Tail, Lease for Life, Years, or at Will, though there be no clause of Distress in the Lease.

Co. 1 part Inst.  
204.b.205.a.30.  
Ass.pl.8. 17 E. 3.  
7. Co.lib.4.f.73.  
Phillips pr. of  
Law, p.26 Dr.&  
Stud.1.2.c.9.

But for Debt, Accompt, Trespass, Reparations, &c. a man may not distrain.

Dr. & Stud. ib.

It is a Maxim in Law, that no Distress can be taken for any Services that are not put into certainty, nor can be reduced to any certainty; for *id certum est quod certum*

20 E.3. Avowry  
131.25 H.6.37.  
Bract. f. 230. &  
238. Co. 1 part  
Inst. f.96.a. Brit.  
f.100.

*reddi*

*reddi potest, for oportet quod certa res deducatur in Judicium:* and upon the Avowry Damages cannot be recovered for that which neither hath certainty nor can be reduced to certainty.

7 E. 3. 38. & Co.  
ubi f. præ.

And yet in some cases there may be a certainty in an incertainty: as a man may hold of his Lord to shear all his Sheep depasturing within the Lord's Manor; and this is certain enough, although the Lord hath sometimes a greater number and sometimes a lesser number there; for this incertainty being reduced to the Manor, which is certain, the Lord may distrain for this incertainty: & sic de similibus.

Co. 1 part Inst. f.  
150. b. 151. b.

A Distress is inseparably incident to every Service that may be reduced to certainty, as aforesaid.

20 E. 3 Avowry  
137. 11 H. 7. 5.  
Coven Lit. f. 47 b.  
& 142. a.

A man may not distrain for Rent after the Lease is ended, nor out of his Fee, except in some special cases, nor in the Night, unless it be Damage-feasant.

† Noye's Max. p.  
45. Vide Rastal  
Tit. Rents. 32 H.  
8. 37. c. Wingates  
Abridgment of  
the Stat. p 407. &  
408. Co. on Lit. f.  
162. a. & Co. 4. l.  
E. 49. in Ognell's  
case, 29 El.

† The Executors or Administrators of him which had Fee-farm in Fee, in Fee-tail, or for Life, may either have an Action of Debt against the

Te-

Tenant that should pay it, or distrain for it: and so may the Husband after the death of his Wife, his Executors or Administrators, and he which hath Rent for anothers Life for the Arrearages after his Death.

If a man put Cattell into my Pasture for a week, and afterwards I give him notice that I will keep them no longer, and he will not fetch them away; I then may distrain them Damage-feasant.

Noye's Maxims,  
P. 43.

If a man take Cattell Damage-feasant, and as he is driving them to the Pound, they run into the Owners house, who refuses to let them out again; here he that distrains, may have a Writ of Rescous against the Owner for so doing.

2 E. 2. Rescous  
12. Co. 1 part of  
Inst. f. 161. a.  
Compl. Att. p.  
196.

If the Lord come to distrain, and see the Cattell, and the Lessee or his Servants drive the Beasts out of his Fee; here the Lord cannot have Rescous, because he had not the possession, but he may follow and distrain them in anothers ground, but not for Damage-feasant, for they must be Damage-feasant at the time of the taking.

Noye's Max. p:  
46. Co. 1 part  
Inst. f. 161. a. 6R.  
2. Ref. 11. 11 H.  
7. 4. 21 H. 7. 4c.  
Co. 9. 1. f. 22. in  
case de Avowry,  
& Terms of the  
Law, verb. Dis-  
tress. 44 E. 3. f.  
20. & F. N. B.  
102.

If

Clayton's Rep:  
p. 64. p. 111.

If a man take a Distress of goods, and shews no cause for what, if they be put in an house, the Owner may break the house, and take them out.

4 E. 6. Tit. Distresses 74. F. N. B. 100. Co on Lit. f. 47. b. 9 E. 3. f. 35. 5 E. 4. f. 7. per Danby. 40 E. 3. f. 33.

If a Distress be taken of goods without cause, the Owner may Rescue; but if they be impounded, he cannot break the Pound and take them out, because they are then in the Custody of the Law.

Co. ubi supra.  
3 E. 3. Tit. Transf. 21. & 34 H. 6. 18.

If a man distrain Cattel for Damage-feasant, and put them in the Pound, and the Owner that had Common there maketh fresh Suit, and finds the Door unlocked, he may then take them out: but if it be locked, he cannot justifie to take them out.

Dr. & Stud. l. 1. c. 16. Cowell's Inst. p. 231.

If Beasts driven by the High-way escape into another mans Corn, he that driveth them is no Trespasser by his Entry to fetch them out again.

Dr. & Stud. l. 2. c. 9.

If a man take a Feoffment reserving a Rent, he cannot distrain without a Clause of Distress; and if the Feoffment be not by Indenture, the Reservation is voyd in Law: like Law where a particu-  
lar

lar Estate is made reserving a Rent, the Remainder over in Fee.

If Tenant for Life grant his whole Estate reserving a Rent, the Reservation is voyd, if it be not by Deed Indented, and without a Clause of Distress it is a Rent-seck, and he cannot distrain.

For an Amercement in a Leet the Lord may distrain; and though the Distress be taken in the Highway, yet in this case it is lawful.

A man cannon distrain for an Amercement in a Court Baron, nor for an Amercement in the Leet in a place seised into the Kings hands for the King's Debt, for it is for that time priviledged.

If a Lease be made at Michaelmas for a year, rendring Rent at the Annunciation and Michaelmas, the Lessor may distrain at the Annunciation, but not at Michaelmas, because the term is expired.

If Tenant for anothers Life make a Lease for Years reserving Rent, and Cestui que vie dieth; in this case Tenant per autre vie cannot distrain, because his Reversion is determined.

Dr. & Stud. ibid.

Dr. & Stud. ibid.  
10 H. 7. f. 15. 34 E.  
2. and 19 E. 2.  
Avowry 221.

Dr. & Stud. ibid.  
47 E. 3. f. 12. Vi-  
de Kitchin, f. 61.  
b. Hughes's gr.  
Abr. 1 part, p.  
721. Co. 10.

Dr. & Stud. ibid.  
& Vide Co. on  
Lit. fo. 47. b.

Dr. & Stud. ibid.  
Vide Perkins,  
691, 692.



Dr. & Stud. l. 2.  
c. 9.

If a Town be Amerced, and the Neighbours by assent assess a certain Sum upon every Inhabitant, and it is agreed, that if it be not paid by such a day, certain persons thereto appointed shall distrain; such Distress is lawful.

Dr. & Stud. ib.  
12 E. 2. 11. 9 E. 3.  
1. Vide Lit. Cha.  
of Rents: & see  
44 E. 3. Hors de  
fon Fee 20. and  
Perkins, 113.

Lord and Tenant by Fealty and Rent, the Lord grants the Fealty reserving the Rent, and the Tenant attorns; the Lord cannot now distrain for the Rent, for it is now made Seck.

Dr. & Stud. ibid.

But if a man make a Gift in Tail reserving Fealty and Rent, and after grants the Fealty reserving the Rent and Reversion; here he may distrain for the Rent, for the Fealty is incident to the Reversion, and cannot be granted without it.

For Herriot-service the Lord may distrain, but for Herriot-custum he must seise, and not distrain.

21 H. 6. 7. & Dr.  
& Stud. ib.

For Rent granted upon Egaity of partition or of Dower, the party may distrain.

34 H. 6. 18. Co.  
1 part Inst. f. 47.  
b. Vid. Comp.  
Att. p. 192.

If a man break the Pound, and take out his goods, he that distrained may have a *Parco fracto* against him,



him, and may also take the goods again wheresoever he finds them, and put them in the Pound again.

If the Tenant forestall the way with force and arms, and threaten in such manner that the Lord dares not come to distrain or demand the Rent, or if there be no Distress on the ground, nor none ready to pay the Rent; then in this case the Lord may have a Writ of *Novel Disseisin* against the Tenant, and recover his Rent and Arrearages: and if the Rent be behind another time, he may have a *Redisseisin*, and recover double Damages.

Co. on Lit. f. 153. b. & f. 161. b.  
Fleta, l. i. c. 42.  
Vide 29. Ass. 49.  
Noye's Max. p. 46.

If a man take a Distress he may not work it, for he hath neither property nor possession *in Jure*.

M. 7 Jac. in C. B.  
More and Con-  
ham's case.  
Owen's Rep. f.  
123. Vide in Bag-  
Rot. 1070. Cro.

shaw and Goward's case, Hil. 3 Jac. in B. R. Rep. 2 part, f. 147.

## CHAP. VIII.

*Of Rescous, where it shall be lawful.*

**R**escous is an old French word coming from *Rescourrer* (*id est*) *Recuperare*, that is, to take from, or rescue, or recover; and is a taking away or setting at liberty

E                      against

Co. 1 part Inst. f. 160. b.

against Law a Distress taken, or a person arrested by the Process or Course of Law.

Co. lib. F. N. B.  
101. c. & 102. f.  
Kilway 20.  
6 H. 6. Distress. 9.  
21 H. 7. 40. a.  
Finch, 14. c. 16. &  
p. 310.

And all is one as to the point of the Distress, to rescue the Distress after it is taken, or before-hand to resist and withstand the taking of it; but yet it is no Rescous until it be distrained.

See in Bevil's ca.  
Co. 4. l. f. 11. 61.  
R. 2 Rescous 10.

If the Lord distrain when there is no Rent arrear, the Tenant may make Rescous and hinder.

7 E. 4. 24. & Co.  
1 part Inst. f. 160.  
b.

Or if the Lord come to distrain, and the Tenant tender the Rent to him, and yet notwithstanding the Lord will distrain, then the Tenant may make Rescous.

Co. lib 17 E. 3. 43.  
Vide Maribr. ca.  
25. 25 H. 3.  
Wingate's Abr.  
Stat. p. 132. See  
Rastall Tit. Di-  
stresses 5. Ferrer's  
Magna. Charta, f.  
25. b.

If the Rent be behind, and the Lord distrain the Cattel of the Tenant in the High-way within his Fee, the Tenant may make Rescous; for no man may distrain in the High-way, except the King and his Officers having special Authority.

Co. on Lit. f. 161. a  
Rastall Tit. Di-  
stresses 10. & see  
Wingate's Abr.  
Sta. p. 132. Fer-  
rer's Mag. Char-  
ta, f. 122. b.

If the Lord will distrain *Averia Caruca*, goods of the Plough, where there is a sufficient Distress to be taken besides, or if the Lord distrain any thing that is not distrainable

able either by the Common Law or by any Statute, the Tenant may make Rescous.

If the Lord distrain out of his Fee in Lands not holden of him, the Tenant may make Rescous, unless it be in some special cases. See after in Ch. 10.

If the Lord come to distrain Cattel which he seeth then within his Fee, and the Tenant, or any other, to prevent the Lord to distrain, drive the Cattel out of the Fee of the Lord into some other place, yet may the Lord freshly follow, and distrain the Cattel, and the Tenant cannot make Rescous; for in judgment of Law the Distress is taken within his Fee, and so shall the Writ of Rescous suppose.

But if the Lord coming to distrain had no view of the Cattel within his Fee, though the Tenant drive them off purposely, or if the Cattel of themselves after the view go out of the Fee, or if the tenant after the view removeth them for any other cause then to prevent the Lord of his Distress; then cannot the Lord distrain them out of his

Co. 1 part last. f. 161. a.

Co. ibid. Comp. Att. p. 196. Co. 9. l. f. 22. in the case of Avowry. 6 R. 2. Resc. 11. 44 B. 3. 20. Hughes's gr. Ab. 1 part, p. 717. c. 21. F. N. B. 102. g. 21 H. 7. f. 40. Kitchen, f. 52. b.

Co. 1 part, Inst. f. 161. a. & Compl. Att. p. 196. Vide Hughes's gr. Ab. 1 part, p. 717. c. 21.

Fee, for if he do, the Tenant may Rescue.

Co. 1 part Inst.  
f. 161. a. 16 E. 4.  
10. 2 E. 2. Avow-  
ry 182. Co. 9.  
1. f. 22. in case de  
Avowry. Noye's  
Max. p. 46.

If a man come to distrain for Damage-feasant, and see the Beasts in his Soil, and the Owner chases them out of purpose before the Distress taken, the Owner of the Soil cannot follow and take them; for if he do, the Owner of the Cattel may rescue them: for they must be Damage-feasant at the time of the Distress taken, and the Owner of the Soil is left to his Action of Trespass.

Co. ubi suprad.  
10 E. 3. 9. 49 E. 3.  
14. 7 E. 3. 3. 11 H.  
7. 28. 8 Aff. 18.  
10 E. 4. 2.

If the Tenant lock up his Gates, and inclose his grounds, so that the Lord cannot come to distrain, this is a Disseisin, if the Lord have had actual possession, and the Rent is behind; for the Lord cannot break open the Inclosures to take a Distress.

## CHAP. IX.

*Of Replevins, when and where to be sued out.*

Co. 1 part Inst.  
f. 145. b.

**R**eplegiare is compounded of Re and Plegiare, as much as to say to deliver upon Pledges or Sureties.

Where

Where goods are distrained and impounded, the Owner of the goods may have a Writ *De Replegiari facias*, whereby the Sheriff is commanded, taking Pledges of prosecuting, to re-deliver the goods distrain'd to the Owner; and this is by the Common Law.

Co. ibid. Vide Fleta, l. 2. c. 40. & Glanvill, l. 12. c. 12.

But the quickest way is to complain to some of the Sheriffs Deputies in the Country, who keep a Seal for that purpose, and they will grant a Replevin, and must take *Plegii de Retorno habendo*, that is to deliver the goods again to the party that distrained, if the action be found against him that Replevieth; and this is by the Statute.

Co. *ubi supra*. Westmin. 2. c. 2. Vide Ferrer's *Mag. Chart. l. 60* Rastall Tit. Replevin 2. & Wingate's Abr. Stat. p. 409 Compl. Att. p. 127.

By the Stat. 1, 2 P.M.c. 12. every Sheriff is at his first County-day, or within 2 months after he receives his Patent, to depute and proclaim in his Shire-Town 4 Deputies to make Replevins, not dwelling above 12 Miles distant one from another; if he fails herein, he forfeits 5 pound every Month they are wanting, to be divided between the King and the Prosecutor.

Wingate's Abr. p. 133. Rast. Tit. Distresses 11. Vide Sheppard's Survey of County Inducatures, p. 47.

Com. Att. p. 125,  
 126. Ferrer's *Magna*  
*Charta*, f. 37.  
 Westm. 1. c. 17.  
 Vide Rastall Tit.  
 Distresses 7. &  
 Wingate's *Abr.*  
 p. 133. Terms of  
 the Law, verb.  
*Distresse*. Vide  
 Sheppard's Sur.  
 of County Judi-  
 catures, p. 49.

If the Lord carry the Distress to a Hold, or out of the County, so that the Sheriff cannot make Deliverance upon the Replevin, then the party upon the Sheriffs return of the Replevin may have a Writ of *Witbernham* directed to the Sheriff, to take as many of the Lord's Beasts, or as much goods in his keeping till he have made deliverance of the first Distress; and if the Beasts or goods be conveyed to a Fort or Castle, the Sheriff may take with him the Power of the County, and beat down the Castle.

Comp. Att. p. 127  
 Vide Marl. b. c. 21.  
 Ferrer's *Magna*  
*Charta*, f. 27. &  
 Rastall Repl. 1.

If it be in a Franchise or *Basswick*, the party shall have a Replevin of the Sheriff, directed to the Bailiff, to deliver them upon Pledges, as before.

3 E. 3. 74. 6 H. 4. 2.  
 & 39. 9 H. 5. 39.  
 20 H. 6. 19. 30 E.  
 3 22. 31 E. 3. Rep.  
 35. Co. 1 part  
 Inst. f. 145. b.

It is a general Rule, that the Plaintiff in the Replevin must have the propriety of the goods in him at the time of the taking; for if the Defendant (that is he that distrained) claim property, the Sheriff cannot grant a Replevin upon Complaint to him made; for it is a Rule in Law, that Property must

must be tryed by Writ.

And therefore in this case the Plaintiff (that is he that sues out the Replevin) may have a Writ *De proprietate probanda* directed to the Sheriff, to try the Property; and if it be found for the Plaintiff, then the Sheriff to make Deliverance, and if for the Defendant, the Sheriff can proceed no farther; un'less the Plaintiff get a *Replegiari facias* to the Sheriff; and then, though he return the Property, &c. yet it shall proceed in the Common Pleas, where the property shall be put in issue, and finally tryed.

31 H. 6. Prop. probanda 5. 1 E. 4. 9. 21 E. 4. 64. & 66. 2 El. Dyer 173. Co. 1 part Inst. f. 145. b. Vide Shepard's Surv. of County Judic. p. 50, 51, & 52.

The Sheriff may take a Plaint upon the Stat. *Malebr.* out of his County, and make Replevin presently; for it should be inconvenient for the Owner to forbear his Cattel till the County-day.

Co. ubi supra.

If he that distrained the Beasts see cause, he may have a Writ of *Recordare*, and so remove the Suit upon the Replevin out of the Sheriff's County-Court; and if the Plaintiff declare not, he that distrained may have a *Retorno habendo*; and if he declare not still, then

E. 4.

the



the Avowant shall have a Writ to enquire of Damages.

Co 1 part Inst. f.  
145. b. 42 E. 3. 18.  
11 H. 4. 17. 7 H. 4.  
17. 48 E. 3. 20.  
Vide Sheppard's  
Survey of County  
Judicatures, p. 46

Note, there be two kind of Properties; a general property, which every absolute Owner hath, and a special property, as goods pledged, or taken to manure his Lands, or the like: and of both these a Replevin doth lie.

5 E. 3. 38, 11 H.  
4. 17 E. 2. Prop  
prob. 6. Co. 1 part  
Inst. f. 145. b.  
Philipps Prin. of  
Law, p. 69. Vide  
Sheppard's Sur-  
vey of County  
Judicatures, p. 52  
& 53.

It is to be noted, that a man cannot claim property by his Baliff or Servant; and the Reason is, for that if the Claim fall out to be false, he shall be punished for his contempt, which the Lord cannot be, unless he make Claim himself; for *Nemo punitur pro alieno Delicto.*

Co. ubi suprà.  
Brañ. 1. 4. f. 233.  
a. b. 31 E. 3. Gage  
Deliver. 5.

If a man by his Deed grant a Rent with Clause of Distress, and grant farther that he shall keep the goods distrained against Gages and Pledges untill the Rent be pay'd, yet shall the Sheriff Replevie the goods distrained; for it is against the nature of such a Distress to be Irrepleviable, and by such an Intention the Current of Replevins should be overthrown, to the hinderance of the Commonwealth.

If

If the Beasts of divers several men be distrained, they cannot join in a Replevin, but every one must have a several Replevin; for in a Replevin it is a good Plea to say that the property is to the Plaintiff and to a Stranger, and where there be two Plaintiffs, that the property is to one of them.

The Tenant shall have a Replevin against the Lord that did wrongfully distrain, though the Beasts be come back again to the Owner, because he can have no Action of Trespass against the Lord.

A Replevin ought to be certain in setting forth the number and kinds of the Cattel distrained, or else it is not good.

# CHAP. X.

*Of Avowries, a word or two briefly concerning the same.*

**A** *Vowry* is where one taketh a Distress for Rent or other thing, and the Owner of the goods sueh out a Replevin, then he that taketh the Distress shall justifie in his Plea for what cause he took it; and if he took in his own Right, he must

E. 5

show

Co. 1 part Inst.  
f. 145. b. 28 E. 3 92  
3 H. 4. 12. 34 H. 6.  
37. Sheppard's  
Surv. of County  
Indicatures, p. 46.  
47. & 52.

F. N. B. 66. b. 4 H.  
7. 40. 11 H. 7. 10.  
Compl. Att. p.  
131. & Philipps  
Pr. of Law, p. 143.  
Finch, l. 1. c. 3.  
P. 46.

Tr. 23 Car. in  
B. R.  
Regest. Practica-  
le, P. 193.

Terms of the  
Law. verb. A-  
vowry.

Terms of the  
Law, verb.  
*Avowry.*

shew that, and so avow the taking,  
and that is called his Avowry.

But if he took the Distress in or  
for the Right of another, then when  
he hath shewed the cause, he must  
make Conusance of the taking, as  
Bailiff, or Servant to him in whose  
Right he took it.

Rastall Tit. A-  
vowry, and Win-  
gate's Abr. p. 34.  
Vide Tr. 15, Cer.  
B.R. Tintnye &  
James's case, in  
Winche's Rep.  
f. 50, & 31. & in  
Cro. 1 part, 358,  
& 385. the same  
case, where there  
is excellent mat-  
ter about Avow-  
ries.

Rastall and  
Wingate, ubi su-  
pra. Co. 1 part  
Inst. f. 269, b.

In Avowrie if the Plaintiff be  
Non-suit, or otherwise barred or  
overthrown, then the Avowants  
shall recover the Damages and Costs  
against the said Plaintiffs, as the  
same Plaintiffs should have done  
or had, if they had recovered in the  
Replevin or Second Deliverance  
found against the said Avowants.

The Lord may avow the taking  
a Distress as in Lands holden of him  
within his Fee, without naming any  
person in certain; and this is by  
the Statute of the 21 H. 8. c. 19.

But by the Common Law they  
could not do this, but were forced  
to avow upon a person in certain,  
which proved often very prejudici-  
al to the Lords, for by the secret  
Fines, Recoveries, Grants and Feoff-  
ments which the tenants made pur-  
posely to defraud their Lords, they  
there-

thereupon were put from the know-  
ledg of their Tenants, upon whom  
by order of Law they should make  
their Avowry, and so to prevent this  
Inconvenience the said Statute was  
made.

But the Lord may avow still by  
the Common Law if he will: and  
although he do avow by the Sta-  
tute upon the Lands generally, as in  
Lands, &c. within his Fee or Seigni-  
ory, yet nevertheless he must alledg  
Seisin by the hand of some particu-  
lar Tenant in certain within 40 years

*Co. ubi supra.*  
Vide Mich. 6.  
Jac. Co. 8 l. Sir  
Will. Foster's  
case. 32 H. 8. ch. 2.  
Rastall Tit. Limi-  
tation 3. & Win-  
gates Abr. p. 295.

In an avowrie made according to  
the Statute, every Plaintiff in the  
Replevin or Second Deliverance, be  
he Termor or other, may have every  
Answer to the Avowry that is suffi-  
cient, and also have Aid, and every  
other Advantage in Law, Disclai-  
mer only excepted: for disclaim he  
cannot, because the Avowry is  
made upon no person certain.

Rastall Tit. A-  
vowry: & Win-  
gates Abr. p. 34.

If the Lord come to distrain, and  
the Tenant chase his Beasts which  
were within the Lord's view out of  
the Land holden, &c. yet if the Lord  
freshly follow and take them, al-  
though it be out of his Fee and Seig-  
niory,

*Co. 9. l. in case de  
Avowry, f. 32.*

niory, he may by the Equity of the Statute avow the taking as in Lands holden of him within his Fee and Seigniory.

Co. 1 part. Inst. f.  
269. b. & see Co.  
3. l. f. 65. & 66. in  
Tenant's case.

If there be Lord and Tenant, and the Rent is behind for divers years, and the Tenant makes a Feoffment in Fee, if the Lord accept the Service or Rent of the Feoffee due in his time, he shall lose the Arrearages due in the time of the Feoffor; for after such acceptance he shall not avow upon the Feoffor, nor upon the Feoffee for the Arrearages in the time of the Feoffor: But if the Feoffor dieth, albeit the Lord accept the Rent or Service by the hands of the Feoffee due in his time, yet he shall not lose the Arrearages; for now the Law compelleth him to avow upon the Feoffee, and that which the Law compelleth him unto, shall not prejudice him.

Vide Aiscough's  
case, 9 Jac. Co. 9.  
l. f. 135, & 136. 20  
H. 6. 9. 26 H. 6.  
Avowr. 17. 9 El.  
Dyer. 257. 20 E.  
3. Avowry 131.  
5 H. 7. 11.

There are four manner of Avowries.

1. Upon his very Tenant.
2. Upon his very Tenant by the manner, where the Tenant had but a particular Estate.
3. Upon his Tenant by the man-  
ner

ner, where the Lord had but a particular Estate. And these 3 are by the Common Law.

4. Upon the matter in the Land as within his Fee; and this is by the Statute, and the safest way.

C H A P. X I.

*Of Waste: What shall be Waste in Houses, Gardens, Woods, Pastures, &c. and what not.*

**I**F Lessee for Life, Years, in Dow-  
er, &c. pull or prostrate down  
the Houses, or suffer them to be un-  
covered, whereby the Sparrs or Ras-  
ters, Planchers, or other Timber of  
the Houses are rotten, this is Waste.

34E.3. Waste  
143. Vide 10H.7.  
f.2.b. 12H.4 f.4.  
Co. 1 part Inst.f.  
53.a. Vide Hern's  
Law of Conv.  
P 51.

If the House be uncovered when  
the Tenant cometh in, it is no  
Waste in the Tenant, if he suffer the  
same to fall down.

Co. ubi suprad.  
Hern's Law of  
Conv. ubi suprad.

But although the House be unco-  
vered and ruinous at the time of the  
Tenant's coming in, yet if he pull it  
down it is Waste, unless he do build  
it again.

40Ass.pl.22. 23  
H.6. 24. 29E.3.  
33. Co. ubi suprad.  
Compl. At. p.165  
Herne, ubi suprad.

If Glass-windows (though gla-  
sed by the Tenant himself) be bro-  
ken down or carried away, it is  
Waste,

Vide Co. 4. l. f. 63  
in Harlacken-  
den's case Swin-  
burn's Wils 3 par.  
sect. 6. f. 165. &  
Herne, ubi suprad.

Waste; for the Glas is part of the House.

Co. 1 part Inst. f.  
35. a. Vide Keils  
way, f. 83. & Har-  
lackenden's case,  
*ubi suprà.* 22H.  
6. 18. 22E. 4. 18.  
Swinburn, *ubi  
suprà.* Compl.  
Att. *ubi suprà.*

And so it is of Wainscoat, whether it be fixed to the Walls or Posts of the House with great Nailes, or little Nails, Screws, or Pins, it is all one, if it be fixed to the Freehold once, it is Waste to take it away again.

Co. 1 part Inst.  
f. 53. a. 10 El. Dy-  
er 272. 42 E. 3. f. 6  
Noye's Maxims,  
p. 33.

The same Law of Benches, Doors, Windows, Furnaces, and the like, annexed or fixed to the House, either by him in the Reversion, or the Tenant.

40 Aff. pl. 22. Br.  
Waste 117.  
Kitchin, f. 242. b.

The Rasing of a new Frame of a House which was never covered, is no Waste.

12 H. 4. f. 4.  
Kitchin, f. 241. b.  
Co. *ubi suprà.*  
19 E. 3. Waste 30.  
Heine's Law of  
Convey p. 52.

The House uncovered by sudden Tempest or otherwise, it is no Waste in the Tenant if he let it lie so, till the main Timber be rotten; and then he shall be punished in Waste, for not repairing it in time.

Co. *ubi suprà.*  
Vide in Co. 4. 1.  
f. 63. Harlacken-  
den's case. Dr. &  
St. 1. 2. c. 4.

If the House fall by sudden Tempest, or be burnt by Lightning, or prostrated by Enemies, or the like, without any Default of the Tenant, or was Ruinous at his coming in, and fall down, this is no Waste.

And



And the Tenant may build the same again with such materials as remain, and with other Timber growing upon the ground (which he may take) for his habitation; but he must not make the House larger then it was, for if he do, he is punishable in Waste.

Co. ubi *suprà*. 43.  
E. 2. 6. 11 H. 4. 32.  
22 H. 6. 18.  
Herne's Law of  
Conv. p. 52.

Though there be no Timber growing upon the ground, yet the Tenant at his perill must keep the Houses from wasting.

Co. ubi *suprà*. 44.  
E. 3. 21. 38 Aff. pl.  
1. Com. Att. p.  
166. Herne's Law  
of Conv. p. 51.

If the Tenant build a new House where none was before, it is Waste; and if he suffer it to be wasted, it is a new Waste.

Co. ubi *suprà*  
Kitchin, f. 242. a.  
42 E. 2. 21. 12 H.  
4. f. 6. 17 E. 2.  
Waste 118.

If the Tenant either do or suffer Waste to be done in the Houses, yet if he repair them before any Action brought, he is clear; but he cannot plead *quod non fecit vastum*, but the special matter.

Co. 1 part Inst.  
f. 53. a. 40 E. 3. f. 6  
38 Aff. pl. 1. Vide  
Kitchin f. 242. a.  
Herne's Law of  
Conv. p. 51, & 52.

The pulling down of a Stone-wall, or Mud-wall of an House, is Waste.

Kitchin, ubi *suprà*.  
10 H. 7. f. 2.  
b. Com. Att. p.  
166.

A Wall uncovered when the Tenant comes in, is no Waste, if he suffer it to decay.

Co. ubi *suprà*.

If the Tenant of a Dove-house,

Brit. f. 134. 5 R.  
2. Waste 97. Pl.  
Com. 322. Ho.

bart's Rep. f. 234. Co. ubi *suprà*, Herne's Law of Conv. p. 32.

Park,

Park, Warren, Vinary, Estangues, &c. do take so many, as such sufficient store be not left as he found when he entered, this is Waste; and to suffer the Pale to decay, whereby the Deer are dispersed, is Waste.

F. N. B. 59. k.  
Kitchin, f. 242. b.  
Co. 1. part Inst. f.  
53. b.

If the Tenant suffer the Houses to be wasted, and then sell Timber to repair them, this is a double Waste.

21 H. 7. f. 26. per  
Kingmil.

If a Termor fix a Furnace, and not to the Walls nor Posts of the House, if he take it away within his term, it is no Waste, for the House is not impaired.

Kitchin ubi su-  
pra.

If Tenant in Fee fix a Furnace or Fat in the middle of the House, the Heir shall have it, and not the Executors.

34 E. 3. f. 3. b. 11.  
H. 4. f. 21.

If an House fall by a great Wind or Tempest, the Lessor shall have the Timber; for it is no Waste, and the Lessee is not bound to redifie it.

If the Tenant take away a Lead or Fatts fixed to the House, it is Waste.

11 H. 4. f. 32. Kit-  
chin, f. 242. b.

If a Stable be ruinous at the time of the Lease made, and fall, the Tenant

nant may cut down Trees to make a new one; but if there were none there before, it is Waste if he cut Trees to build one.

The Tenant may cut Trees to amend the House and make Reparations; but where it is in decay through his own default, there if he cut Trees to repair it, it is Waste.

*Kitchin ubi supra. Fitz. 59. k.*

It is to be observed, that there is Waste, Destruction and Exile. Waste properly is in Houses, Gardens and Timber-trees, (*viz.* Oak, Ash and Elm, and these are Timber in all places) either by cutting of them down, or lopping and topping them, or doing any act whereby the Timber may decay.

*Co. 1 part Inst. F. 53. a. Vid. Herne's Law of Convey. p. 52.*

Also in Countries where Timber is scant, and Beeches or the like are converted to building for the habitation of man, or the like, they then are also accounted Timber, and cutting of them by the Tenant is Waste.

*Co. ubi supra. Herne ubi supra.*

If the Tenant cut down Timber-trees as is aforesaid, or such as are accounted Timber, it is Waste; and if he suffer the young germens to be destroyed, this is Destruction, and

*22 H. 6. 12. a. F. N. B. 59. m. Co. ubi supra.*

and punishable in Waste also.

20 E.3. Wast. 32.  
10 H.7.2.42 E.3.  
6.b.5 E.4.100. 41  
E.3. Waste 82.12  
E.4.1. & Co. 1  
part Inst. f.53.a.

If the Tenant cut down Underwood, (as he may by Law) yet if he suffer the young germens to be destroyed, or stub up the same by the Roots, so that it can grow no more, this is Waste.

40 E.3. f.15.b.4  
E.6. Waste, Br.  
136. Kirchin, f.  
243 a. Co. ubi su-  
pr. 2. Comp. Att. p.  
165. Herne's Law  
of Conv. p. 52.

Cutting down of Willows, Beech, Birch, Aspe, Maple or the like, standing and growing in the defence and within the view of the House, is Waste.

Temps H.8. Br.  
Waste 184.

Beech of the age of 20 years, nor under 20 years, may not be cut by Tenant for Life or Years, for it is Waste, unless it be in some Countries where there is plenty of Timber.

13 H.7. f.21.

A man cannot assign Waste in the cutting of Beeches of the age of 7 or 8 years.

40 E.3 f.25.b. 10  
H.7. f.2. F.N.B.  
60.c. Kirchin, f.  
243.2.

Cutting of Hasels which grow not under the great Trees, but in a quarter of the Wood by themselves, is Waste.

Co. 1 part Inst. f.  
53 a. 46 E.3. f.17.  
9 H.6. f.10. 13 H.  
8.1. Kirchin, f.  
244.2.

If there be a Quick-set-fence of White-thorn, and the Tenant stubs it up, or suffers it to be destroyed, it is Waste.

The

The cutting of dead wood which is dry and hollow, and neither bears Fruit nor Leaves in Summer, is no Waste.

Co. ubi *supra*, &  
Kitchin ubi *sup*.  
F.N.B. 59.m. 16  
El. Dyer 332.

The Tenant may take sufficient Wood to repair the Walls, Pales, Fences, Hedges and Ditches, as he found them; but he can make no new ones but it will be Waste.

Co. 1 part Inst. f.  
53.b.

He may also take sufficient Plough-bote, House-bote, and Fire-bote, as is shewed before in Chap. 5. p. 91.

If the Tenant cut down Trees for Reparations, and sell them, and after buyeth them again and employs them about necessary Reparations, yet it is Waste by the Vendition, for he cannot sell Trees, and with the money cover the House.

Co. 1 part Inst. f.  
53.b. Compl. Att.  
p. 167. Herne's  
Law of Conv. p.  
55.

Burning of the House by negligence or mischance is Waste.

Co. ib. & Herne  
ubi *supra*.

A Termor may take Beech, Ashes, and the like, which are well seasonable, and have been used to be felled every 20, 16, 14, or 12 years, and it is no Waste, for it is called *Sylva cadua*.

4 E. 6. Bro. Waste  
136.

Cutting of Beeches and selling them

7 H. 6. f. 40. Kit.  
chin, f. 243.b.

them is Waste; but the Termor may cut them to repair upon the same Land, but not to make Reparations upon other Lands.

11 H.6. f.1. Sed  
vide 4 E.6. f.136.  
Kitchin, f.243. a.

Cutting Beeches of 10 years old seasonable for House-bote, is no Waste; but where they are of the age of 20 years, and fit for main Timber, that is Waste.

Kitchin, f.243. b.  
11 H.6. f.1. Com.  
Att. p.167.

Where Oaks are cut, and the young germens suffered to be eaten with Cattel, so that they will be but Shrubs, this is Waste.

22 H.6. f.14. Kit-  
chin, f.243. b.

One may assign Waste in the cutting of 20 Oaks, and also in their Stocks, to wit in not springing them again; for if they were saved, they would be Timber, and for that they are not saved, it is Waste.

F.N.B.f.59. m.

A Termor may cut seasonable wood, which is wont to be cut every 20 years, or within such time.

46 E.3. f.17. Kit-  
chin, f.244. a.

Cutting of White-thorn is Waste, but not the cutting of Black-thorn.

4 E.6. Bro. Wast.  
136.

Where there is a Wood in which groweth nothing but Under-wood, the Termor cannot cut all; *contra* of Under-wood where Ash, Beech, and other principal Trees grow amongst

amongst them, for there he may cut all the Under-wood.

Where Apple-trees are blown down, and after become dead, the Tenant may cut them for Fewel. 7 H. 6. f. 40. Kit. chin, f. 244. a.

Cutting of Apple-trees, though they lye all along on the ground, yet if they bear fruit, it is Waste. Kitchin, ib. 44 E. 3. f. 44. Compl. Att. p. 168.

Cutting of Damfin-trees is Waste. 10 H. 7. f. 2.

If the Tenant cut down any of the Fruit-trees growing in the Garden or Orchard, it is Waste. 7 H. 6. 38. 44 E. 3. 44. Co. 1 part Inst. f. 53. a.

But if such Trees grow in any place of the ground out of the Garden or Orchard, it is no Waste if he cut them. Co. 1 part Inst. f. 53. a. Vide Hern's Law of Conv. p. 52.

Digging for Gravel, Lime, Clay, Brick-earth, Stones, or the like, is Waste. Co. ib. f. b. F. N. B. 59. n. Hern's Law of Conv. p. 53.

And so it is if the Tenant dig for Mines of Metal, Coals, &c. in the Earth, and not open at the time of the Lease made. Idem ib. 41 E. 3. Waste 8 Hobarts Rep. f. 234. Hern ubi supra.

But he may dig for Gravel or Clay for Reparations of the House, and it is no Waste. Co. ubi supra. Com. Att. p. 168. Hern ubi supra.

It is Waste to suffer a Wall of the Sea to be in decay, so as by the flowing & reflowing of the Sea the

Mea-



6 El. *ubi supra*. F.  
N. B. 59. n.

Meadow or Marsh is surrounded, whereby the same becomes unprofitable; but if it be suddenly by the rage and violence of the Sea, occasioned by some Tempest or the like, without any default of the Tenant, this is no Waste punishable.

Co. *ubi supra*. 29  
H. 8. Dyer 33. 22  
H. 6. 4. 10 H. 7. 5.  
a. Kitchen, f. 241.  
b.

If the Tenant repair not the Banks or Walls of Rivers or other Waters, whereby his Ground is surrounded, and becomes rushy and unprofitable, this is Waste.

Kitchen *ib.* 20 H.  
6. f. 1.

To suffer Pasture-ground to be surrounded with water, so that it becomes rushy and nothing worth, or Arable-land to be surrounded, so that nothing remains but tough Clay, this is Waste.

Co. 1 part Inst. f.  
53. b. 29 H. 8.  
Dyer 37. Hobart.  
Rep. f. 234. Vide  
Kitchen, f. 241. b.  
10 H. 7. 5. 2. 44 E.  
3. 44. & Com.  
Att. p. 168.

If the Tenant convert Arable-land into Wood, or *è converso*, or Meadow into Arable, it is Waste; for it doth not only change the course of his Husbandry, but the proof of his Evidence.

2 H. 6. f. 11, F. N.  
B. 59 n.

To suffer Arable-land to lie fresh, so that it is full of Thorns, is no Waste,

Co. 1 par. Inst. f.  
54. b. 17 E. 3. 7.  
9 H. 6. 66. F. N. B.

If a man lease his Lands in which

149. c. & 59 n. Vide Hil. 15 Jac. in the Lord Darcy & Askwith's case. Hobart's Rep. f. 234. Hearn's Law of Conv. p. 54, & 55-

are

are Mines of Coals or the like, without mentioning the Mines in the Lease, the Lessee for such Mines as are open at the time of the Lease made may dig lawfully, and take the profits thereof; but he may not dig for any new ones, it is waste.

If there be open Mines, and the Owner make a Lease of the Land with the Mines therein, this shall extend to the open Mines only, and not to any hidden Mines: but if there be no open Mines, and the Lease is made of the Land together with all Mines therein, in this case the Tenant may dig for them, and enjoy the benefit thereof, otherwise the words should be void.

*Co. ubi supra.*  
Vide Saunder's  
case, 41 El. in Co.  
B. Co. 5. l. f. 12.  
Hern's Law of  
Conv. p. 54, & 55.

If a Lease be made to one of Lands, to occupy the same after the best way he can, or to make his best profit of them, yet this shall be intended only to be after such manner as is according to Right and Law; for in this case the Lessee may not plow up Meadow, or pull down Houses, &c. for if he do, he shall be punished in waste.

*17 E. 3. Tit. 101.*  
Kitchin, f. 248. a.

If the Lessee make the Villanes or Tenants at Will poor, where they were

*Co. 1 part Inst. f.*  
*53. b.*

were rich when he came in, whereby they depart from their Farms, this Exile and punishable.

## CHAP. XII.

*Who are punishable in Waste, and for what Waste, &c.*

Co. 1 part Inst. f. 52. b.

**W**aste in Latine is called *Vastum*, à *Vastando*, from wasting and depopulating.

Idem, f. 53. a.

There are two kinds of Waste; that is to say, Voluntary or Actual Waste, and Permissive Waste.

Noye's Max. p. 33. Co. 1 part Inst. f. 53. a. & 2 par. Inst. f. 302. Pl. Com. f. 467. b. 68. a. Philipps Pr. of Law, p. 32. Vid. *Mag. Charta*, ch. 4. & Stat Glouc. c. 5. Rastal Waste 1. 4. 5. & Wingate's Abr. Stat. p. 551. & 552. 4 H. 6. f. 11. Kitchin, f. 338. a.

An Action of Waste lieth against Tenant by the Courtesie, Tenant for Life, for Years, or half a year, Tenant in Dower, or Guardian in Chivalry, by him that hath the Estate immediate of Inheritance, for Waste or Destruction in Houses, Gardens, Woods, Trees, Lands, Meadows, &c. or in Exile of men, to the disherison of him in the Reversion or Remainder, and they shall lose the place wasted, and treble Damages.

Co. 1 part Inst. f. 54. a. Ferrer's *Mag. Charta*, f. 26. b.

It doth not lie against Guardian in Soccage, but an Action of Account or Trespass.

Waste

Waste lieth not against Tenant by *Elegit*, Statute-Merchant or the Staple, but an Action of Account after the Debt and Damages levied.

Noye's Max. p. 33. F.N.B. 59. c. 16 E. 3. Fil. Wast. 102. 2 E. 2. Wast. 2

Neither doth it lie against Tenant at Will; but if such Tenant voluntarily pull down the Houses or cut down Timber-trees, &c. in this case the Lord may have an Action of Trespass against him, *Quare vi & armis*, &c. but for permissive Waste the Lord hath no Remedy against him.

Co. 1 par. Inst. f. 57. a. 21 H. 6. 38. 48 E. 3 f. 25. 11 H 6. f. 38. 12 E. 4. f. 8. 22 E. 4. 5. 21 H. 6. f. 43. Kitchin, f. 237. a. b. Walgrave & Somerset's ca. Mich. 29. & 30 El. Goldsb. Rep. p. 72. pl. 17.

Either Waste or Account will lie against Tenant in Mortgage, for he hath Fee Conditional.

Noye's Max. ubi *supra*.

There are five several Writs of Waste; two at the Common Law, for Waste done by Tenant in Dower or the Guardian; and three by the Statute-Law, for Waste done by Tenant for Life, for Years, and Tenant by the Courtesie.

Co. 1 part Inst. f. 54. a.

If two or more Joynt-tenants or Tenants in common be of a House of Habitation, and the one of them will not repair the House, the other in that case may have a Writ *De reparatione facienda*.

Co. 1 part Inst. f. 200. b. Reg. 163. f. N. B. 127. & 1 par. Inst. f. 54. b.

F

If

12 H.8.f.1.Co.1  
part Inst.f.54. b.  
Vid. Herne's Law  
of Conv.p.54.

If the Lessor covenant to repair the House, and doth not, in this case the Lessee may cut Timber growing upon the ground and repair it, though he be not compellable thereunto, and shall not be punished in Waste for cutting the wood.

Co. *ubi supra*.

If a man make a Lease of an House and Lands, without impeachment of Waste for the House, yet may the Lessee notwithstanding repair the House with the Timber growing upon the ground, though he may utterly waste the House if he will.

Co. 1 part Inst.f.  
53. b. F.N.B. 59.  
f. 8 R. 2. Waste  
47. 27 H.8. 13.

No person shall have an Action of Waste, unless he hath the immediate state of Inheritance; but sometime another shall joyn with him for Conformity; as if a Reversion be granted to two, and the Heirs of the one, they two shall joyn in an Action of Waste.

Idem *ibid*.

And in like sort the surviving Coparcener and the Tenant by the Courtescie shall joyn in an Action of Waste.

Co. *ubi supra*.  
2 H. 4. 22.

If the Estate-Tail determine, hanging the Action of Waste, and the Plaintiff become Tenant in Tail after

after possibility of issue extinct, the Action of Waste is gone.

If the Tenant do waste, and he in the Reversion dieth, the Heir shall not have an Action of Waste for the Waste done in the life of the Ancestor.

2 H.4, Co. ubi supra. Noye's Max, p.33.

Nor a Bishop, Master of an Hospital, Parson, &c. in the time of the Predecessor.

Co. ubi supra.

If Lessee for Years commit Waste and die, no Action of Waste lieth against his Executors or Administrators for Waste done before their time.

Idem ibidem. 10 E.4. 1. 49 E.3. 25. 11 E.2. Wa. 115. 2 Mar. 117. 8 E.2. Waste 110.

If two Coparceners be of a Reversion, and the one of them dies, the Aunt and Niece shall joyn in an Action of Waste,

Idem ibid.

If Lands be given two, and the heirs of one of them, he that hath the Fee shall not have an Action of Waste upon the Statute of Glouc. for that they are Joynt-tenants; but his Heir shall have an Action of Waste against Tenant for Life.

Co. 1 part Inst. f. 53. b. & 200. b. 24 E.3. 27. 50 E.3. 3. 8 H.6. 13. Co. 2 part Inst. on Stat. Glouc. ch. 5.

If Lessee for Life commit Waste, and after surrender his Estate, and the Lessor accepts it; now the Lessee is discharged of the Waste.

F. N. B. 36. b. 14 H.8. f. 11. Kitchen, f. 244. a. b.



Kithin, *ibid.* 5 H.  
4. f. 3. 3 H. 6. f.  
17. b.

If a stranger make Waste upon the Lands which one holdeth for Life or Years, the Termor shall be punished for it, and is left to take his Remedy over.

Kithin, *ubi supra*, 5 H. 4. f. 3.

But if the Lessor himself make Waste, the Tenant shall not suffer for that Waste.

*Idem ibid.* 48 E.  
3. f. 15. 34 H. 6.  
f. 7.

If the Tenant make Waste before his Attornment, he shall not be liable to an Action for it.

44 E. 3. f. 21, Kithin, *ubi supra*.

If the Lessor covenant to deliver Timber out of the same Land to repair the House let, and will not, and for lack thereof the Lessee will not repair it, but suffers the House to fall; in this case he is punishable for such Waste: But if the Timber be to be taken out of other Lands, and is not delivered, then the Tenant is excusable if he suffer the House to fall, and no Action of Waste lies against him.

*Idem Ibid.*

Co. 1 part Inst. f.  
53. b.

*Note*, After the Waste done, there is a special regard to be had to the continuance of the Reversion in the same estate that it was at the time of the Waste done; for if after the Waste he grant it over, though he take back the whole Estate



Estate again, yet is the Waste dispunishable: and so it is if he grant the Reversion to the use of himself and his Wife, and of his Heirs, yet the Waste is dispunishable, and so of the like; because the Estate of the Reversion continues not, but is altered, and consequently the Action of Waste for Waste done before (which consisteth in privity) is gone.

A Prohibition of Waste did lie against Tenant by the Courtesie, Tenant in Dower, and Guardian in Chivalry by the Common Law, but not against Tenant for Life or Years, because they came in by the Lessor's own Act, and he might have provided that no Waste should be done.

Tenant by the Courtesie or in Dower can hold of none but the Heir and his Heir by descent; and therefore if they grant over their Estate, and the Grantee doth Waste, yet the Action must be brought against themselves for the Waste done, and not against the Assignes or Grantees.

But the Heir either before the

F 3

Assign-

Bract. l. 4. f. 315.  
316. Brit. f. 198.  
Dr. & Stud. l. 2.  
ch. 1. 12 H. 4. 3.  
10 H. 3. Wast. 142.  
4 H. 3. Wast. 140.  
Co. ubi supra.

Noyes's Max. p.  
33. Co. ubi supra.  
F. N. B. 56. e. f.  
and see Co. 3. l. in  
Walker's ca. & 9.  
l. in Beaumont's  
ca. Regest 72.

Co. ubi supra.

Assignment had granted, or after the Assignment doth grant the Reversion over; in both these cases the Grantee must bring the Action of Waste against the Assignee, for now the privity is destroyed.

Co. 1 part Inst. f.  
54.2. 27 E. 4. 81.  
26 E. 5. Waste 10.

In all other Cases the Action of Waste must be brought against the parties that commit the Waste, (for it is in nature of a Trespass) unless it be in case of a Ward; for there if the Guardian doth Waste and assign over, the Action lieth against the Assignee.

Co. ubi suprà.  
12 H. 4. 3. 3 E. 3.  
Waste 146. Fleta 2,  
1. 1. ch. 11.  
Idem ibid. F. N.  
B. 59. a. & 60. g.  
& 1.

A Guardian shall not be punished for Waste done by a Stranger.

But Tenant by the Courtesie, in Dower, for Life, Years, &c. shall be punished for waste done by a Stranger, and are left to take their Remedy against the Stranger as aforesaid.

F. N. B. 59. 1.  
Kitchin, f. 244. b.

If Waste be made by strange Enemies or sudden Tempest, the Termor is punishable for such Waste. See before ch. 11. p. 127.

F. N. B. 36. b. 3 E.  
3. Tit. 20. Kitchin,  
ubi suprà.  
Co. ubi suprà.

If Land be let to a Feme sole, and she take Husband, who commits Waste and dies; she shall be punished for this Waste.

Kitchin, ibid.  
Finch, 1. 1. ch. 3.  
p. 26.

But if the Lease were made to the

the Husband and Wife, and he commits Waste and dies; in this case she shall not be punished for such Waste, unless she agree to the Estate.

If there be two Joynt-tenants of a Ward, and one of them commit Waste, both shall answer for it. Co. 1 part Inst. f. 54. a. 33 E. 3. Waste 6.

An Infant and Baron and Feme shall be punished for Waste done by a Stranger. Co. ib. Vide 15 H. 3. Waste 16.

If a Feme Tenant for Life take Husband, and the Husband doth Waste, and the Wife dieth; in this case he is not punishable for such Waste: but if a Feme be possessed of a Term of years, and take Husband who commits Waste, and the Wife dies; here he shall be liable to an Action of Waste for the Waste by him committed, because the Law giveth the Term to him. Co. ib. Vide Clifton's case, 35 El. Co. 5. l. f. 73. 49 E. 3. 25. 46 E. Waste Statham, 10 H. 6. 11, 12.

If Tenant for Life grant over his Estate upon Condition, and the Grantee doth Waste, and the Grantor re-entereth for the Condition broken; the Action of Waste shall be brought against the Grantee, and the place wasted recovered. Co. ubi suprà. 30 E. 3. 16.

If a Lease be made to a Villain, and Waste is done, and the Lord Co. ib. 48 E. 3. 19.

entereth; in this case the Lord shall not be punished for Waste done before entry, but for waste after he shal.

Co. ib. & vide  
Co. 6. l. f. 37. Le  
Dean and Chap.  
de Worc. case; &  
l. 10. f. 9. b. Hern's  
Law of Conv. p.  
53.

An Occupant shall be punished for Waste; and so if an Estate be made to *A* and his Heirs during the life of *B*, and *A* dies, his Heir shall be punished in Waste.

Co. 1 part Inst. f.  
54. 2. 50 E. 3. 3.

4 E. 3. 18. Perkins, 619. F. N. B. 58.  
c. & 59. h. 33 E. 2. Waste 144. 11 E.  
3. Receipt 118. 10 E. 4. 9. Regest.  
74. Paget & Garie's case vouched  
in Co. 2. lib. in Bingham's ca. f. 92.  
& Co. 5. l. f. 76. Paget's case there,  
35 E. in C. B.

If a Lease be made to *A* for Life, the Remainder to *B* for Life, the Remainder to *C* in Fee; in this case if *A* make Waste, no Action lieth against him during the life of *B*; but if *B* die, then an Action of waste lies against *A* for the Waste done in the Life of *B*; because it was *ad exhereditationem* of him in Remainder in Fee, and now the impediment (which was the mean Estate for Life) is taken away.

Vide Paget's ca.  
*ubi supra*, in Co.  
5. l. 1. Hern's Law  
of Conv. p. 53.

And where it is said in some Books, that he in Remainder or Reversion in Fee shall not have an Action of Waste, it is to be intended during the continuance of the mean Remainder for Life: again, where it is said in some other Books, that  
an

an Action of Waste doth lie, it is meant after the death of him in Remainder for Life, and not otherwise, therefore *nota*.

If a Lease for Life be made, the Remainder for Years, the Remainder in Fee; here an Action of Waste lies presently against the Tenant for Life, during the term in Remainder, for this mean term for years is no impediment.

Finch, l. 1. ch. 3.  
p. 29. Co. 1 part  
Inst. f. 54. 2. Vide  
Hern's Law of  
Conv. p. 50, & 53.

But if a man maketh a Lease for Life or Years, and after granteth the Reversion for Years, the Lessor shall have no Action of Waste during the years; for he himself hath granted away the Reversion in respect whereof he is to maintain his Action: but it is otherwise if he had made a Lease in Reversion, which had been but a future Interest, for there an Action of Waste lieth during the term, and the term shall be saved in that case.

Co. ubi *supra*, &  
Vide 4 E. 3. 18.

If an Action of Waste be brought, and pending the Writ the term end, yet the Writ shall not abate; for although the Plaintiff cannot recover the place wasted, yet he shall recover the treble damages.

11 H. 6. f. 8. E. N.  
B. f. 60. 14 H. 8. f.  
12 Kitchin, f.  
246. b.

Co. 1 part Inst.  
f. 135 a. 11 H. 6.  
43-9 E. 4. 50.

And so where one that holds for term of anothers Life makes Waste, and afterwards *Cestui que vie* dies, here the Lessor shall recover Damages, although he cannot recover the place wasted.

F. N. B. F. 60.  
Kitchin, *ubi supra* 36 E. l. in C. B.  
Boothe's case,  
Co 5. l. f. 77.

If Tenant for Life or years, or their Assigns make a Grant over, and yet take the profits; then an Action of Waste lieth against him by him in Reversion or Remainder, by the Statute of 12 H. 6. c. 5.

Co. 1 part Inst. f.  
54. a. & 2 part Inst.  
f. 304. 4 E.  
6. Waste 135.  
18 H. 8. 1. 15 H.  
7. 11. 8 E. 3.  
Waste 112. 4 E.  
2. 32. 15 E. 3.  
Waste 108. See  
Temps E. 1.

If Waste be done in one Corner of a Wood, that onely shall be recovered; but if it be *sparsim* that is here and there in the Wood, then the whole Wood shall be recovered, or as much wherein the Waste *sparsim* is done.

Waste 122, and 134. Kitchin, f. 246. b. Regestum practicale, p 343.  
Herne's Law of Conveyances, p. 54.

Co. 1 part. Inst. f.  
54. a. 8 E. 2. Waste  
112.

And so in Houses, so many Rooms shall be recovered wherein there is Waste done; but if the Waste be done *sparsim*, through all, then all shall be recovered.

If a man make a Lease for Life, and by Deed grant that if any Waste be done, that it shall be redressed by Neighbours, and not by



by Suit or Plea; yet notwithstanding an Action of Waste doth lie, for the place wasted cannot be recovered without Plea.

If a man make Waste in cutting trees which grow in Hedge-rows which inclose Pasture, nothing shall be recovered but *Locus vastatus*, that is the circuit of the Roots, and not the whole Pasture: But if the Trees grew *sparsim*, scatteringly about the Pasture, then the whole Pasture is forfeited if they be cut.

4 E. 6. Wast. 136.  
per Bromley, &  
Pasch. 1650. in  
B.R. per Just.  
Jermyn. Vid.  
Regest. pract.  
P. 343.

Reg. pract. ubi  
*supra*.

It is a good Plea in Bar to a Writ of Waste, to say that the House fell by sudden Tempest, although the Termor did covenant to repair it; but it is no Plea in a Writ of Covenant.

43 E. 6. f. 6. Wast  
Kitchin, f. 247. 2.

It is a good Plea in Waste to say, that at the time of the Lease made, the House was ruinous, and the Timber putrified and and rotten, so that it fell; for if any of the principal Timber were rotten, it is no Waste, though he did covenant to repair it. See before, ch. 2.

Kitchin, ubi *su-  
pra*. 49 E. 3. f. 7.  
Wast.

P. 14.

It is also a good Plea to say, that the Plaintiff hath entered upon the Land.

SH. 6. f. 27. Wast.  
SH. 5. f. 5. Wast.  
*mes vices* Co. 1  
part Inst. f. 285. 1.



Land, before which Entry no Waste was made; or that he Surrendred, and the Plaintiff did accept, before which time no Waste was made.

19 H. 6. f. 66. Vide  
Co. 1 part Inst. f.  
283. a. & Kitchen,  
f. 247. b.

It is no Plea to say, that at the day of the VVrit purchased, the House was sufficiently repaired; but he must say after the VVaste committed, and before the VVrit purchased, it was sufficiently repaired; and this is a good Plea.

19 H. 6. 66. 14 H.  
6. 14. 11 R. 2.  
Waste 99. Co.  
1 part Inst. f.  
285. a.

If the Lessee doth VVaste, and after surrenders, and the Lessor agrees; yet notwithstanding the Lessor may have an Action of VVaste, and recover the treble Damages.

Co. ubi *supra*.  
2 H. 4. 22. 6 E. 2.  
Brief 807.

If an Action of VVaste be brought by Baron and Feme in Remainder in special Tail, and pending the VVrit, the VVife dieth without Issue; now the VVrit in this case shall abate, because everykind of action of VVast must be *ad exhereditationem*.

Co. 1 part Inst.  
f. 200. b. Westm.  
2 chap. 22. Vide Rastall Waste  
6. Wingate's Abr. Stat. p. 552.  
Ferrer's Mag. Charta, fo. 71. b.  
Co. 2 part Inst. fo.

If there be two Joynt-tenants of a VVood, Turbary, Piscary, or the like, and one of them doth Waste against the will of the other; here the other may have an Action of VVaste against him

him, and he that did the Waste hath election before Judgment either to take his part in certainty by the Sheriff, and the Oath of 12 men, &c. or that he grant that from thenceforth he shall not do Waste, but according to his proportion, &c. and if he make choice of a certain place, then the place wasted shall be assigned to him.

And this doth extend as well to Tenants in common; and Joynt-tenants for Life, as to an Estate of Inheritance: but if one Tenant in common of Joynt-tenant out of a Dove-house destroy the whole Flight of Doves, no Action of Waste doth lie in that case upon the Statute, but the other may have an Action of Trespass against him that destroyed them, *quare vi & armis Columbare le Pl. fregit*, & 200 *Columbas pret. 40s interfecit*, &c.

If a Lease be made to hold to one without any impeachment of Waste, then the Lessee may cut down Trees, and convert them to his own use; but if the words be, to hold without impeachment for any

Co. 1 part Inst.  
fo. 200. a. b. 47.  
E. 3. 22. b. 2 H. 5.  
1, & 3.

Co. 1 part Inst. f.  
220. Vide Co.  
Reports, l. 2 f. 23,  
l. 9. f. 9. l. 12. f. 83.

any Action of Waste, then in this case if the Lessee cut down Trees, the Lessor shall have them, for the discharge extends but to the Action.

Co. 1 part Inst. f.  
233. b. & 234. a.

If Lessee for Life grant a Rent-charge, and after doth Waste, and the Lessor recover in an Action of Waste, he shall hold the Land charged during the life of the Tenant for Life; but if the Rent were granted after the Waste done, the Lessor shall then avoid the Grant made by the Lessee for life.

Co. 1 part Inst. f.  
341. a. 10 H. 7. 5.  
F. N. B. 55. d. &  
57. c.

A Parson, Vicar, Arch-deacon, Prebend; &c. may have an Action of VVaste, and the VVrit shall be said *ad exhereditationem Ecclesie*, &c. *ipsius B*, or, *præbende ipsius A*.

Co. 1 part Inst. f.  
345. b. 42 E. 3. 23.  
F. N. B. 60. b. 41  
E. 3. Wast. 83. 42  
E. 3. 18.

If Tenant in Fee release to his Tenant for Life all his Right, yet he shall have an Action of VVaste.

Idem ibid.

And if Tenant in Tail make a Lease for his own Life, yet he shall have an Action of VVaste.

Co. 1 part Inst. f.  
345. b. 43 Ass. pl.  
13. 41 E. 3. Wast.  
83. 11 H. 4. 67. 13  
H. 7. 10. Pl. o.  
Com. 482.

But if Tenant for Life be, the Remainder to another in Tail, and he in the Remainder release to the Tenant for Life all his Right and State in the Land; in this case he

can-

cannot afterwards have an Action of VVaste.

If the Lessor bring an Action of VVaste against his Lessee, the Lessee cannot plead generally *Riens en le Reversion*, but he must shew how and by what means the Reversion is devested out of him. Co. 1 part Inst. f. 356. a. 45 E. 3. 20. 8 H. 6. 13. 30 H. 6. 7.

But if the Grantee of a Reversion bring an Action of VVaste, the Lessee may plead generally, that he hath nothing in the Reversion. Co. ubi supr.

If a Bishop make a Lease for Life or Years and dies, and the Lessee, the See being void, doth VVaste; in this case the Successor shall have an Action of VVaste. Co. 1 part Inst. f. 356.

And so if Lessee for Life be disfeised, and Waste is done, and the Lessee re-enters; here an Action of Waste lieth against him. Co. ubi supr.

If Lessor and Lessee for Years, &c joyn in the cutting down of 20 Oaks, &c. growing upon the Lands leased, the Lessor shall not punish the Lessee for the same. Mich. 18 H. 8 5. Perkins, 202.

If the Lessee before his term begin enter into the Lands let to him, and do an Act which amounteth unto Waste, the Lessor shall not have

have an Action of Waste for the same.

Finch, 1.1. ch. 3.  
p. 29.

None shall have Judgment to recover in an Action of Waste, where the Waste comes but to 12<sup>d</sup> or such a petty Sum; for *De minimis non curat Lex*.

Co. 2 part Inst. f.  
303 Reges. Prac.  
p. 348.

If Waste be done upon Lands let for term of Years or Life, by one against whom the Lessee can have no Remedy in Law for committing the same Waste; the Lessee in such case is not punishable for the same by the Lessor, except there be a special Covenant in the Lease, that he shall not commit nor suffer Waste to be done.

Note well, what hath been here said concerning Guardians in Chivalry and their Wards, is but only to shew what the Law was formerly in those cases: for now by the Stat. of 12 Car. 2. chap. 24. Wardship (that former undoing of many Gentlemen) Primer-Seisins, and all *Ouster le mains*, &c. are quite taken away, and all hold now in free and common Soccage; and every Father, whether he be at age of 21 years or under, may by Deed

ex.

executed in his life-time, or by his last Will and Testament in writing, in the presence of two or more credible Witnesses delivered, dispose of his Children under the age of 21 years, and not married at the time of his Death, for and during such time as they shall remain under the age of 21 years, or any lesser time, to the Custody and Tuition of any person or persons in Possession or Remainder, (Popish Recusants excepted :) and such Disposition of such Child or Children since the 24 Febr. 1645, or hereafter to be made, shall be good against all and every person and persons claiming such Child or Children, as Guardian in Soccage, or otherwise, &c.

**CHAP.**

## CHAP. XIII.

*An Abridgment of the Statute of the  
43 Elizab. and 15 of Car. 2.  
about the unlawful cutting, steal-  
ing or spoiling of Wood, &c. ne-  
cessary for all Gentlemen to know.*

**I**F any shall be convicted by his  
his own Confession, or by the  
Testimony of one Witness upon  
Oath, before one Justice of Peace,  
or Head-officer, to have unlawfully  
cut or taken away any Grain  
growing, robbed any Orchard or  
Garden, digged up or taken away  
any Fruit-trees, broken any Hedges,  
Pales, or other Fences, cut or spoiled  
any Woods or Under-woods,  
standing and growing, or the like,  
or to have been accessory thereunto,  
he shall, within such time as  
the Justice or Head-officer shall ap-  
point, pay for the first Offence to  
the party grieved so much as the  
Justice or Head-officer shall set  
down: and in case the party of-  
fending be not able to pay it, or  
do it not according to Order, then  
the Offender is by them or either of  
them (respectively) to be committed



ted to the Constable, or other Officer of the Place where the Offence was committed, or the party apprehended to be whipped; and so for every Offence afterwards, and proved as aforesaid, the Offender is to have the like punishment of Whipping.

If the Constable refuse or neglect to whip the Offender, any such Justice of Peace or Head-officer may commit him to Prison without Bail, till he whip or cause to be whipped the party offending, as is above declared.

No Justice may execute this Statute for Offences done to himself, unless he be associated with one or more Justices of Peace whom the Offence doth not concern, *Stat. 43 El. ch. 7.*

Now the Statute of the 15 Car. 2. is an Additional Act to this, as follows.

That every Constable, Head-borough, or other person in every County, City, Town Corporate, or other place where they shall be Officers or Inhabitants, shall have power

power to apprehend or cause to be apprehended such as they suspect for having, or carrying, or any ways conveying any Burthen or Bundles of any kind of Wood, Under-wood, Poles, or young Trees, Bark or Bait of Trees, or any Gates, Styles, Posts, Pales, Rails, or Hedg-wood, Broom, or Furze.

If any person be suspected to have any such Woods, Under-woods, &c. any Officer, by Warrant under the hand and Seal of one Justice, may enter by virtue thereof into the Houses, Out-houses, Yards, Gardens, or other places belonging to such persons, and wheresoever they find any such, they may apprehend those persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose custody such Wood, &c. is found, cannot give a good Account, which may be satisfactory to the Justice, how he came by the same with the consent of the Owner, or do not within a convenient time, set down by the Justice,

Justice, produce the party of whom he bought the same Wood, Underwood, &c. or some other credible Witness to depose upon Oath such Sale of the said Wood, Underwood, &c. (which the Justice may administer:) that then the said person shall be deemed convict of the said offence of cutting and spoiling of the same Woods, Underwoods, &c. within the meaning of the before-recited Statute of the 43 of *Eliz.* and be liable to the punishment therein contained; and to pay over and above down presently, to the use of the Overseers of the Poor of the place where the Offence is committed, for the First Offence, such a sum, not exceeding 10 s, as the Justice shall appoint. And if the Offender shall not perform the Justices Order herein to the Owner, and also to the Overseers of the Poor, then the Justice is to commit him to the House of Correction, for so long (not exceeding one Moneth) as he shall think meet, or to be whipt by the Constable or other Officer, as the Justice shall judge most expedient.

dient. And if such person shall again offend in the like kind, and be convicted as before, then he must be sent to the House of Correction for one Moneth, and be there held to hard Labour. And if he do offend the third time, and be convicted as before, then he shall be taken, adjudged, and deemed as an Incurrible Rogue.

If any buy any Burthens of Wood, &c. (as before named) which may be justly suspected to have been stol'n or unlawfully come by; any Justice, Mayor, Bailiff, or Head-officer within his Jurisdiction, may, upon complaint to him made, examine the matter upon Oath, which they may administer: and if he find that the same was bought of one that may be justly suspected to have stol'n or unlawfully come by the same, he may then order the party that bought the same, to pay Treble the value to the part from whom they were stol'n, or unlawfully come by, and in default of present payment thereof, issue out his Warrant to levy the same by Distress and Sale of the Offenders goods,

goods, rendring the over-plus to the owner of such goods; and for lack of such distress, to commit the party to the Gaol, there to remain without Bail for the space of one Moneth at his own charges.

Note, that no man is to be punished by this Law, that hath been punished by a former Law for the same Offence: nor is any man to be questioned for any offence in this Statute, unless he be questioned for the same within six weeks after the Offence is committed.

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FINIS.

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